

No. 4449

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United States

15

# Circuit Court of Appeals

For the Ninth Circuit.

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LEONARD CHENERY, as Administrator with the  
Will Annexed of the Estate of EDITH P.  
CHENERY, Deceased,

Plaintiff in Error,

vs.

THE EMPLOYER'S LIABILITY ASSURANCE  
CORPORATION, LIMITED,

Defendant in Error.

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## Transcript of Record.

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Upon Writ of Error to the Southern Division of the  
United States District Court of the Northern  
District of California, Second  
Division.

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FILED

FEB - 9 1925

F. O. BROMOKYONG



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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LEONARD CHENERY, as Administrator with the  
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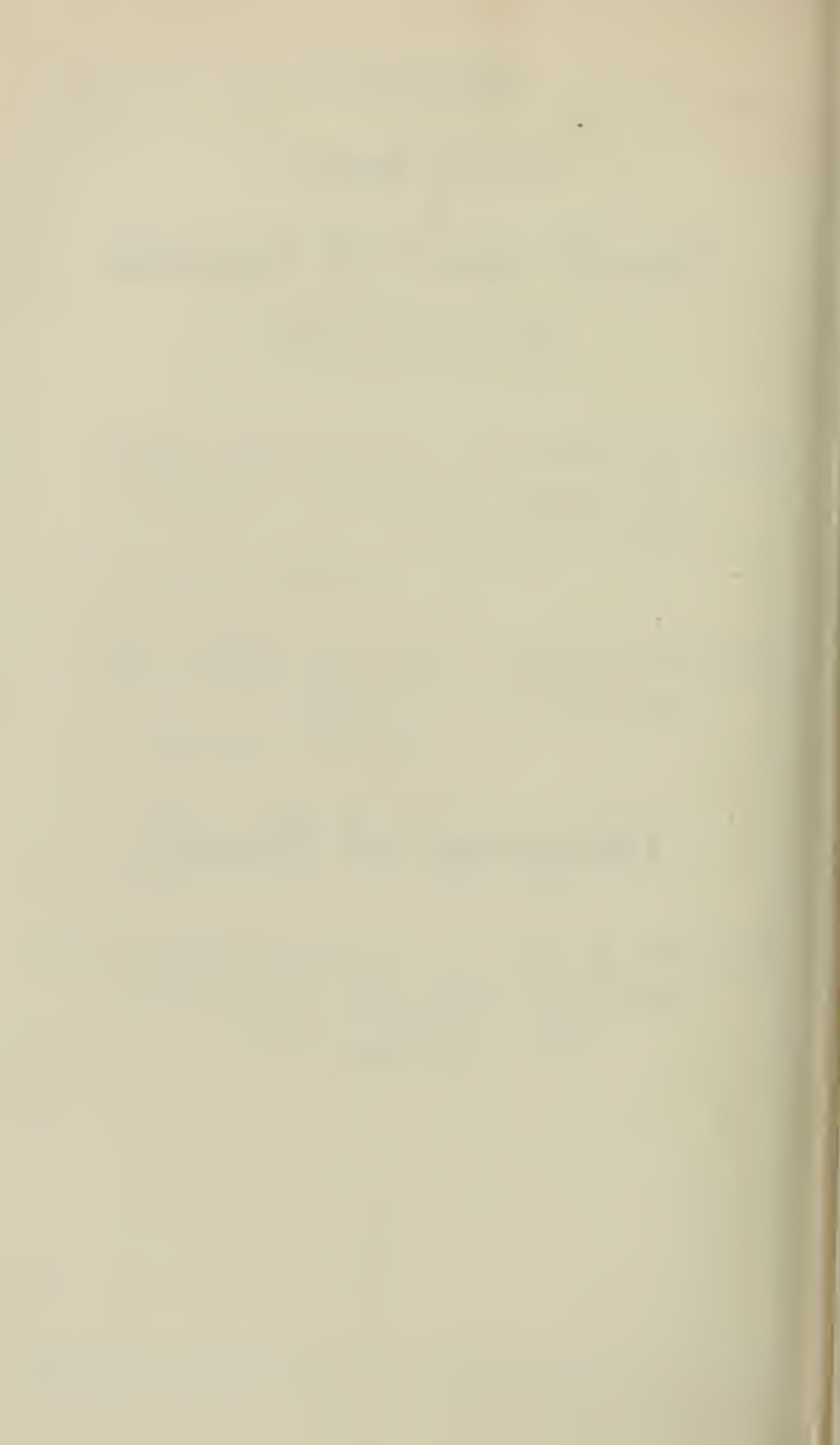
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

Messrs. WALLACE & AMES, Mills Bldg., San  
Francisco, Calif.,  
Attorneys for Plaintiff in Error.

Messrs. REDMAN & ALEXANDER, Aetna Bldg.,  
San Francisco, Calif.,  
Attorneys for Defendant in Error.

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In the District Court of the United States in and  
for the Northern District of California, Second  
Division.

No. 17,020.

LEONARD CHENERY, as Administrator With  
the Will Annexed of the Estate of EDITH  
P. CHENERY, Deceased,  
Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, a Corpora-  
tion,  
Defendant.

THIRD AMENDED COMPLAINT FOR RE-  
COVERY UPON LIFE INSURANCE  
POLICY.

Now comes plaintiff above named and leave of  
Court having been first had and obtained, files this

his third amended complaint, and for cause of action against the defendant above named alleges:

I.

That at all times mentioned herein the defendant above named was and is a foreign corporation organized under the laws of the Kingdom of Great Britain, and qualified to do business as a foreign corporation in the State of California, with its principal place of business in said state, in the city and county of San Francisco; that said corporation has for its principal purpose the writing of Life and Accident Insurance, and at all times mentioned herein was and is engaged in the transaction of the business of Life and Accident Insurance in the State of California.

II.

That on or about the 14th day of June, 1917, Leonard Chenery and defendant entered into a contract of insurance, whereby [1\*] the defendant on said date made and issued its policy of insurance in writing bearing No. 389194 insuring Leonard Chenery under the provisions of said policy upon his life for the principal sum of Seven Thousand Five Hundred Dollars (\$7,500.00) and against accident and also insuring Edith Chenery, the sole beneficiary named in said policy upon her life in the sum of Five Thousand Dollars (\$5,000.00) and against accident, as is more particularly set forth in said policy of insurance, copy of which is attached hereto, marked Exhibit "A" and made a part hereof as if herein expressly stated; that

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\*Page-number appearing at foot of page of original certified Transcript of Record.



thereafter said policy of insurance was renewed from year to year by the said defendant and the plaintiff herein by written agreement and certificate of renewal showing date of payment of premium and date of renewal; that on the 23d day of June, 1922, said policy was so renewed by the defendant, and the premium required to be paid for such renewal was paid by the plaintiff herein, and said policy of insurance was continued in force and effect from noon on the 5th day of July, 1922, up to noon on the 5th day of July, 1923, as more particularly appears from the certificate of renewal of said policy, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof with the same force and effect as if herein expressly stated; that thereafter, to wit, on the 25th day of June, 1923, said policy was so renewed by the defendant, and the premium required to be paid for such renewal was paid by the plaintiff herein, and said policy of insurance was continued in force and effect from noon on the 5th day of July, 1923, up to noon on the 5th day of July, 1924, as more particularly appears from the certificate of renewal of said policy, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof with the same force and effect as if herein expressly stated.

### III.

That from and after the said 14th day of June, 1917, Edith [2] Chenery, also known as Edith P. Chenery, was and continued to be the sole beneficiary under the terms and provisions of said policy

of insurance and extensions thereof up to and including the 16th day of June, 1923, the date of her death as hereinafter set out.

IV.

That Edith P. Chenery died on or about the 16th day of June, 1923; that thereafter proceedings were had for the probate of the estate of said Edith P. Chenery in the Superior Court of the State of California, in and for the city and county of San Francisco, and on the 12th day of July, 1923, the plaintiff herein was duly appointed and qualified as administrator with the will annexed of Edith P. Chenery, deceased; that the plaintiff at all times since has been and now is the duly qualified and acting administrator with the will annexed of the estate of Edith P. Chenery, deceased.

V.

That Edith P. Chenery, the beneficiary referred to under said provision, at the time of her death was over the age of eighteen years, and under the age of sixty years, and at the time of her death was in sound condition mentally and physically; that the said Edith P. Chenery met her death solely and independently of all other causes, through external, violent and accidental means, and not by suicide, while a passenger in a public conveyance provided by a common carrier for passenger service in the following manner, to wit: That on said 16th day of June, 1923, the said Edith P. Chenery was a passenger for hire in a motor bus [3] operated by one J. Ward as a public conveyance and common carrier upon a regular route between the

towns of Clevedon and Papakura, in the State of New Zealand, Commonwealth of Australia, for a regular rate of hire; that while said public conveyance was being operated as aforesaid upon said route, and while said Edith P. Chenery was a passenger and was in said public conveyance, said public conveyance fell over an embankment into a stream of water at the bottom thereof and the said Edith P. Chenery was crushed and drowned in said stream of water while said Edith P. Chenery was a passenger and was in said conveyance.

#### VI.

That within thirty (30) days from and after the 16th day of June, 1923, the date of the death of said beneficiary, the plaintiff gave written notice and proof of said death to the defendant; that more than sixty (60) days had elapsed since the giving of said written notice first hereinabove referred to, and that more than sixty (60) days had elapsed since the furnishing of said proof of death hereinabove referred to before the filing of the original complaint in this action against said defendant on the 27th day of December, 1923; that the defendant on the 18th day of December, 1923, in writing notified this plaintiff that it denied all liability under said policy by reason of said death of said Edith P. Chenery; that the plaintiff herein has paid all of the premiums required by him to be paid at the times and in the manner required in said policy of insurance and said written extensions thereof; [4] that this policy has never

been cancelled by the defendant by written notice delivered to the assured and/or mailed to him or in any manner or at all, but that the said policy and said extensions thereof were in full force and effect on said 16th day of June, 1923, and ever since have been and now are in full force and effect.

#### VII.

That by reason of said death a loss has occurred under the provisions of said policy of insurance in the sum of Five Thousand Dollars (\$5,000.00); that plaintiff has demanded that the defendant pay said loss, but the defendant has wholly refused and neglected, and still does refuse and neglect to pay to the plaintiff the said sum of Five Thousand Dollars (\$5,000.00) or any part thereof, and the whole of said sum is now due, owing and unpaid to plaintiff.

#### VIII.

That said Leonard Chenery, both as an individual and as the administrator with the will annexed of the estate of Edith P. Chenery, deceased, has duly performed all of the conditions on his part contained in said policy required by him to be kept and performed.

WHEREFORE plaintiff prays judgment against the defendant in the sum of Five Thousand Dollars (\$5,000.00), together with interest thereon from and after the 16th day of June, 1923, together with costs of this action.

WALLACE & AMES,  
Attorneys for Plaintiff. [5]

State of California,  
City and County of San Francisco,—ss.

Leonard Chenery, being duly sworn, deposes and says:

That he is the plaintiff in the above action; that he has read the foregoing amended complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated to be upon information and belief, and as to such matters he believes it to be true.

LEONARD CHENERY.

Subscribed and sworn to before me this 19th day of April, 1924.

[Seal] FLORA HALL,  
Notary Public in and for the City and County of  
San Francisco, State of California.

(Here follow Exhibits "A," "B" and "C," which are incorporated in the bill of exceptions.)

Service and receipt of a copy of the within 3d amended complaint is hereby admitted this 19th day of April, 1924.

REDMAN & ALEXANDER,  
Attorneys for Defendant.

[Endorsed]: Filed Apr. 21, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.  
[6]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator, etc.,  
Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, a Corpora-  
tion,  
Defendant.

ANSWER TO THIRD AMENDED COM-  
PLAINT.

Comes now the defendant and answering the third amended complaint denies and alleges as follows:

1. Denies that the alleged policy insured Edith Chenery upon her life in the sum of five thousand dollars (\$5,000.00) or any sum, and against or against accident, and in that behalf alleges the true fact to be that the insurance, if any, accorded to Edith Chenery is based upon Section H of the policy of insurance referred to in the third amended complaint, said Section H of said policy being entitled "Beneficiary Benefits"; and defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer whether said Edith Chenery qualified for said Beneficiary Benefits pursuant to said Section H of the policy,

and therefore and upon that ground denies that she qualified for the alleged or any benefits under said Section H or that said beneficiary was insured pursuant to said Section H.

2. Defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer the [7] allegations contained in paragraph IV of the third amended complaint and therefore and upon that ground denies each and every allegation in said paragraph contained.

3. Said defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations of paragraph V of the third amended complaint that at the time of her death she was over the age of eighteen and under the age of sixty years and at the time of her death or at any time was in sound condition mentally and physically and that said Edith P. Chenery met her death solely and independently of all other causes through external, violent and accidental means and not by suicide, and therefore and on that ground denies each and every of said allegations; and denies that she met her death while a passenger in a public conveyance or provided by a common carrier for passenger service either as alleged or otherwise; and denies that on the 16th day of June, 1923, or at any time, said Edith P. Chenery was a passenger for hire in a motor bus operated by one J. Ward, or any one, as a public conveyance and common carrier, or as a public conveyance or common carrier upon a regular or any route between the Towns of Clevedon and Papa-

kura, in the State of New Zealand, Commonwealth of Australia, or any place, for a regular or any rate of hire or otherwise. And denies that she was at said time a passenger in a motor bus operated by one J. Ward or any person as a public conveyance and, or common carrier upon a regular or any route between the Towns of Clevedon and Papakura in the State of New Zealand, Commonwealth of Australia, and for or for a regular or any rate of hire; and said defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations of the third amended complaint that on the 16th day of June, 1923, the said [8] Edith P. Chenery was a passenger for hire in a motor bus operated by one J. Ward, either at the alleged or any place, and for or for a regular rate of hire, and that while said bus was being operated upon the alleged route and while said Edith P. Chenery was a passenger and was on the conveyance, said conveyance fell over an embankment into a stream of water at the bottom thereof and the said Edith P. Chenery was crushed and drowned in said stream of water while said Edith P. Chenery was a passenger and was in said conveyance, and therefore and upon that ground denies each and every of said allegations; and denies that the alleged conveyance was a public one and denies that said alleged conveyance was being operated as alleged upon a regular route; and denies that Edith P. Chenery was a passenger in a public conveyance and denies that the alleged conveyance which is alleged to have fallen over the



embankment was a public conveyance, or operated by a common carrier.

4. Denies that within thirty days from and after or from or after the 16th day of June, 1923, the date of the alleged death of said beneficiary, plaintiff gave written notice and, or proof of any death caused in any manner covered by the policy of insurance and denies that more than sixty days had elapsed since the furnishing of written notice and, or proof of death caused in any manner covered by the policy of insurance before the filing of the original complaint against the defendant on the 27th day of December, 1923, or at any time.

5. Denies that by reason of said death a loss has occurred under the provisions or any provision of said policy of insurance, or at all, in the sum of five thousand dollars (\$5,000.00), or any sum, and denies that the defendant has neglected to pay the alleged loss or any loss, and, or does still neglect to pay to plaintiff the sum of five thousand dollars [9] (\$5,000.00) or any sum, and denies that the whole or any part of said sum is now due, owing and unpaid, or now or at all due or owing or unpaid to the plaintiff. And defendant denies that there is any sum or amount whatsoever due or owing or unpaid or payable from it to the plaintiff, and denies that the plaintiff has any claim or demand against the defendant or that said plaintiff is entitled to any sum or amount from the defendant whatsoever.

6. Denies that said Leonard Chenery both as an individual and as or as the administrator with the

will attached of the estate of Edith P. Chenery, deceased, or otherwise or at all, has duly or at all performed all of the conditions on his part contained in said policy required by him to be kept and performed or kept or performed.

WHEREFORE, defendant prays to be hence dismissed with its costs.

REDMAN & ALEXANDER,  
Attorneys for Defendant. [10]

State of California,  
City and County of San Francisco,—ss.

C. V. Jensen, being first duly sworn, deposes and says: That he is a member of Chas. J. Okell & Co., General Agents in and for the State of California of the defendant in the above-entitled action and that none of the other officers of the defendant corporation is in the State of California; that he has read the foregoing answer to the third amended complaint and knows the contents thereof and that the same is true of his own knowledge except as to matters therein alleged on information and belief and that as to such matters he believes it to be true.

C. V. JENSEN.

Subscribed and sworn to before me this 16th day of June, 1924.

[Seal] OLIVER DIBBLE,  
Notary Public in and for the City and County of  
San Francisco, State of California.

Service of the within answer to third amended complaint admitted this 16th day of June, 1924.

WALLACE & AMES,  
Attorneys for Plaintiff.

[Endorsed]: Filed June 16, 1924. Walter B. Maling, Clerk. [11]

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(Title of Court and Cause.)

### VERDICT.

We, the jury, find in favor of the defendant.

SAMUEL BRECK,  
Foreman.

[Endorsed]: Filed November 11, 1924. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [12]

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(Title of Court and Cause.)

### JUDGMENT ON VERDICT.

This cause having come on regularly for trial upon the 11th day of November, 1924, being a day in the November, 1924, term of said Court, before the Court and a jury of twelve men duly impaneled and sworn to try the issues joined herein. Alden Ames and Bradley L. Wallace, Esqrs., appearing as attorneys for plaintiff and Jewel Alexander, Esq., appearing as attorney for defendant; and the trial having been proceeded with and oral and documentary evidence upon behalf of the plaintiff having been introduced and the defendant having moved the Court to instruct the jury to return a verdict in its favor and the Court having granted said motion and the jury having returned the following verdict which was ordered recorded, namely: "We, the

jury, find in favor of the defendant. Samuel Breck, Foreman," and the Court having ordered that judgment be entered in accordance with said verdict and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action; that defendant go hereof without day and that said defendant do have and recover of and from said plaintiff its costs herein expended taxed at \$43.20.

Judgment entered November 11th, 1924.

WALTER B. MALING,  
Clerk. [13]

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In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator With  
the Will Annexed of the Estate of EDITH  
P. CHENERY, Deceased,  
Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, a Corporation,  
Defendant.

BILL OF EXCEPTIONS ON BEHALF OF  
PLAINTIFF.

BE IT REMEMBERED, that on Tuesday, the  
11th day of November, 1924, the above-entitled ac-

tion came on regularly for trial before the above-entitled court and a jury, Honorable George M. Bourquin presiding, and the plaintiff herein being represented by Alden Ames and Bradley L. Wallace of the firm of Wallace & Ames, attorneys at law, and the defendant being represented by Jewel Alexander of the firm of Redman & Alexander, attorneys at law, thereupon the following proceedings were had and taken:

After the impanelment of a jury, Alden Ames, as counsel for plaintiff, made the opening statement, and Jewel Alexander made the opening statement on behalf of defendant.

The following witnesses were sworn and depositions read:

#### DEPOSITION OF LEONARD CHENERY, FOR PLAINTIFF.

LEONARD CHENERY, called for the plaintiff, sworn.

Mr. AMES.—Q. Mr. Chenery, you are the plaintiff in this action?     A. Yes.

Q. And you are now and were at the time of the commencement of this action the administrator with the will annexed of the estate of Edith P. Chenery, deceased?     A. Yes. [14]

Mr. AMES.—I offer in evidence at this time a certified copy of letters of administration with will annexed of the estate of Edith P. Chenery, deceased.

Mr. ALEXANDER.—No objection.

(The document was here marked Plaintiff's Exhibit 1.)

(Deposition of Leonard Chenery.)

Mr. AMES.—Q. Mr. Chenery, in July, 1917, you took out a policy—

Mr. ALEXANDER.—The policy is also admitted, your Honor.

Mr. AMES.—Very well. We will offer it in evidence, and ask that it be marked Plaintiff's Exhibit 2, insurance policy No. 389,914, of the Employers' Liability Assurance Corporation. You will admit, Mr. Alexander, that the premiums on that policy have all been paid to date?

Mr. ALEXANDER.—That is admitted.

(The document was here marked plaintiff's Exhibit 2.)

Mr. AMES.—Q. Edith P. Chenery, the beneficiary named in that policy, was your wife?

A. Yes, sir.

Q. And she died on or about the 16th day of June, 1923? A. Yes, sir.

Q. At that time she was in New Zealand, was she? A. Yes, sir.

Q. She left here shortly before that date, did she?

A. She left in April.

Q. In April of the same year? A. Yes.

Q. At the time that she left, that is the last time you saw her, she was in good health, and in sound condition, both mentally and physically? A. Yes.

Q. At the time of her death she was approximately of the age of around 55, was she? A. Yes.

Q. You were notified of her death by cable, were you not? A. Yes.

Q. And shortly thereafter you notified Charles J.

(Deposition of Leonard Chenery.)

Okell & Co., the agents under this policy, of the loss, did you? A. Yes.

Mr. AMES.—I will ask counsel to produce the original letter [15] of July 6, 1923.

The COURT.—I understand counsel admits all these matters.

Mr. ALEXANDER.—There is no dispute as to them.

Mr. AMES.—Then you will stipulate, Mr. Alexander, that all matters relating to the giving of notice of loss and the presentation of proper proof were made by this plaintiff, and that there is no dispute on any point in connection with that feature of the case?

Mr. ALEXANDER.—I think that request is too broad. We admit that notice was given, and the forms of proof required by the policy were tendered to the company. We do not dispute that fact.

The COURT.—Very well.

Mr. AMES.—And you admit, also, that on or about the 18th day of December, 1923, you denied liability on this policy in writing?

Mr. ALEXANDER.—Yes, we did, pursuant to the terms of the letter you have.

Mr. AMES.—I offer this letter in evidence, dated December 18, 1923, from Charles J. Okell Co. The signature on that letter, Mr. Alexander, was by a duly authorized agent?

Mr. ALEXANDER.—A duly authorized agent of the defendant corporation; there is no question about that.

(Deposition of Leonard Chenery.) .

(The document was here marked Plaintiff's Exhibit 3.)

Mr. AMES.—Q. And you are now claiming by virtue of your representation of the estate of Edith P. Chenery the loss under this policy due to her death?

Mr. ALEXANDER.—We object to that question as immaterial, irrelevant and incompetent, and calling for the legal conclusion of the witness.

The COURT.—He may answer.

A. Yes.

The COURT.—I understand from counsel there is only one issue in the case, and that is surrounding the circumstances of the death, whether it is one that brings the case within the conditions of the policy. [16]

Mr. AMES.—Yes.

Q. As to what happened in New Zealand, you are not able to testify? A. No.

Mr. AMES.—That is all.

Mr. ALEXANDER.—No questions.

#### DEPOSITION OF HILDA M. GRAVES, FOR PLAINTIFF.

HILDA M. GRAVES, called for the plaintiff, sworn.

Mr. AMES.—Q. Mrs. Graves, your name was formerly Mrs. Hilda Hart? A. It was.

Q. And that is the name that you were known by in the year 1923. A. Yes.

Q. You knew Mrs. Chenery during her lifetime?



(Deposition of Hilda M. Graves.)

A. I did.

Q. You are no relative of the family at all, are you? A. No.

Q. Were you a visitor at the home of Mrs. Humphries Davies in New Zealand during the month of June, 1923? A. I was.

Q. And at that time was Mrs. Chenery there?

A. Yes.

Q. On that occasion you, together with Mrs. Chenery, left the home of Mrs. Humphries Davies to go to the railroad station, didn't you? A. We did.

Q. That was on the 16th day of June, 1923?

A. Yes.

Q. On what conveyance did you go?

A. We started in a conveyance owned by Mrs. Davies, in a cart.

Q. A horse-drawn cart? A. Yes.

Q. That was owned by Mrs. Davies? A. Yes.

Q. Where did you go in that conveyance?

A. Well, I don't know the name of the place where we were met by this Ford—somewhere along the road.

Q. Who met you on the road? A. Mr. Ward.

Q. And he was operating what?

A. A Ford car.

Q. Do you know whether or not it was his business to carry passengers? A. Yes, it was. [17]

Q. That was his regular business, was it?

A. Yes.

Q. Who was in the party besides yourself and Mrs. Chenery?

(Deposition of Hilda M. Graves.)

A. A trained nurse and a lawyer, Mr. Spence.

Q. And the nurse's name was Miss Edge?

A. Yes.

Q. On this occasion Mrs. Chenery was in sound health both mentally and physically wasn't she?

A. Yes.

Q. You got to Clevedon didn't you in this Ford?

A. Yes.

Q. How far from the place where you took the Ford was Clevedon, approximately?

A. I think we were in the Ford half or three-quarters of an hour.

Q. Was it about six miles?      A. Possibly.

Q. At Clevedon you changed to a different conveyance, did you?      A. Yes.

Q. What kind of a conveyance did you get on?

A. On to a motor-bus.

Q. Will you describe to the jury that motor-bus?

A. It had, as I recollect, four seats; there were three of us in the back seat. The main part of the car was filled with luggage. On the front seat sat Mr. Spence and the driver, Mr. Ward; it was pinned in with curtains on either side.

Q. And you and Mrs. Chenery and Miss Edge were sitting in the rear seat?      A. In the rear seat.

Q. Was this motor-bus like an ordinary car or was it changed in some way?

A. Well, it looked like a very large automobile to me, what we would call a motor-bus.

Q. A motor-bus as distinguished from a pleasure car: Is that what you mean?      A. Yes, sir.

(Deposition of Hilda M. Graves.)

Q. And there was an extra seat built in it?

A. The seats were very wide; they held three people.

Q. And there was an extra seat in the middle was there? A. Yes, as I recall it.

Q. In other words, its appearance was distinctly that of what we call a motor-bus as distinguished from a private car: Is that correct?

A. Yes. [18]

Q. I don't wish to lead you, Mrs. Graves, but I want to bring these matters out. Did you have any conversation with Mr. Ward with reference to this motor-bus that you got on at Clevedon?

Mr. ALEXANDER.—We object to that as being immaterial, irrelevant and hearsay.

The COURT.—What is the object of it?

Mr. AMES.—The object is to prove that this is the bus that he regularly used on this run and so admitted.

Mr. ALEXANDER.—We object to that as hearsay and not binding on the defendant.

The COURT.—I am inclined to think so. Objection sustained.

Mr. AMES.—Your Honor, it is the statement of the man, himself, whose business it was.

The COURT.—But you could have taken his deposition.

Mr. AMES.—That is perfectly true.

The COURT.—Show me some authority for it. I don't know of any. It sounds purely hearsay to the Court. Objection sustained.

Mr. AMES.—Q. Do you know as a fact, or don't

(Deposition of Hilda M. Graves.)

you know, that this man had a regular run connecting with the railroad train?

Mr. ALEXANDER.—Objected to as immaterial, irrelevant and incompetent, and it has not been shown whether she knows the fact or not.

Mr. AMES.—Q. Do you know the fact that he had a regular run connected with the railroad train?

A. I do.

Mr. ALEXANDER.—I object to that unless it is shown that she knows of her own knowledge and not by hearsay.

The COURT.—She has answered she knows.

Mr. AMES.—Q. Has he?

Mr. ALEXANDER.—Before that question is answered may I ask a question as to the means of her knowledge?

The COURT.—You may. [19]

Mr. ALEXANDER.—Q. Do you know anything about that of your own knowledge, except the particular ride you were on? A. No.

Q. Only what was told you by others?

A. What the man, himself, told me that day.

Mr. ALEXANDER.—We object to the testimony as hearsay, and not of her own knowledge.

The COURT.—Objection sustained.

Mr. AMES.—Q. The entire party went on to this motor-bus at Clevedon? A. Yes.

Q. Will you tell the jury what happened after that?

A. We drove I suppose half or three-quarters of a mile from Clevedon in this bus, and it was dark,

(Deposition of Hilda M. Graves.)

half-past five, and raining, and we slipped over an embankment and the motor-bus overturned and we went into a river. After that, I don't know just what happened for some time.

Q. You were rendered unconscious at the time?

A. Yes.

Q. After you regained consciousness did you see Mrs. Chenery? A. No.

Q. Do you know what happened to Mrs. Chenery? A. Yes.

Q. What happened?

Mr. ALEXANDER.—You may state that. She died. We concede that.

Mr. AMES.—You concede she died by accidental means, through external violence?

Mr. ALEXANDER.—No, I do not concede that. I concede she died.

Mr. AMES.—Then I have to go into the matter.

Q. What happened to Mrs. Chenery?

Mr. ALEXANDER.—She stated she did not know.

The COURT.—Q. Do you know?

A. I know she was killed.

Mr. AMES.—Do you know how she was killed?

A. From the overturning of this conveyance.

Q. Did the conveyance overturn into the water?

A. Into the water. [20]

Q. And she was drowned, in fact, in the water, wasn't she—crushed and drowned? A. Yes.

Q. Do you know how long she lived after that?

A. Not many minutes.

(Deposition of Hilda M. Graves.)

Q. In other words, so far as you know, she was dead when she was taken out from under the car?

A. Yes.

Q. Of course, this thing happened very rapidly, and you were rendered unconscious at the moment?

A. Yes.

Cross-examination.

Mr. ALEXANDER.—Q. Was she crushed and drowned, or crushed, or drowned?

A. I don't know.

Q. You were on the Davies Ranch, were you, when Mr. Ward, the driver was called for? A. I was.

Q. Did they telephone for him to come?

A. Yes.

Q. Who telephoned? A. Mrs. Davies.

Q. And he came pursuant to that telephone message? A. Yes.

Q. Were you transferred into a larger machine at Clevedon, or outside of Clevedon?

A. At Clevedon.

Q. Who requested the change to be made?

A. The driver, himself.

Q. Had you, or had Mrs. Chenery complained of being in cramped quarters in the little Ford?

A. Not until we changed.

Mr. ALEXANDER.—That is all.

Mr. AMES.—Your Honor, may I have an exception to your Honor's rulings sustaining the objections of counsel?

The COURT.—Surely.

DEPOSITION OF JESSIE L. P. BERRY, FOR  
PLAINTIFF.

JESSIE L. P. BERRY, called for the plaintiff,  
sworn.

Mr. AMES.—Q. Mrs. Berry, you were Mrs.  
Chenery's sister? A. Yes. [21]

Q. You have visited your other sister, Mrs. Davies,  
in New Zealand, on several occasions, have you?

A. Yes.

Q. How long have you stayed down there at a  
time?

A. The last time I went down in November and I  
stayed until October.

Q. Of what year? A. That was last year.

Q. So you were there eight months? A. Yes.

Q. And you were there on other occasions?

A. Yes.

Q. How long did you stay on the previous oc-  
casion?

A. I was there six or seven months, I think.

Q. And during the time you were there you were  
at Mrs. Davies' ranch, were you? A. Yes.

Q. Where is that with reference to Clevedon?

A. I suppose it is about nine miles from Cleve-  
don.

Q. Where is the nearest railroad junction?

A. Papakura.

Q. Do you know of your own knowledge the oc-  
cupation of this man Ward? A. Yes.

Q. What was his occupation?

(Deposition of Jessie L. P. Berry.)

A. Well, he motored from Clevedon to Papakura, taking passengers to and from the trains.

Q. To and from the trains?

A. Yes, and even to the ranch.

Q. Was it his custom to get people from the ranches and take them to trains?

A. Yes, and he has taken me from there.

Q. Do you know whether or not he serves the public generally?

Mr. ALEXANDER.—We object to that as immaterial, irrelevant and incompetent, and calling for the witness' conclusion. It is a question of law.

The COURT.—It is leading, for one thing. You may ask her details to find out what she knows. Objection sustained.

Mr. AMES.—Exception.

Q. Mrs. Berry, what do you know with reference to the occupation of Mr. Ward, as to whether or not he serves the public generally? [22]

Mr. ALEXANDER.—We object to that upon the same ground. We have no objection to the lady stating what she observed. What she learned by hearsay is not competent.

The COURT.—She may answer. Objection overruled.

A. He serves the public generally, because I always paid him my fare.

Mr. ALEXANDER.—I move that that be stricken out as not responsive, and it is a legal question, rather than stating what she knows as to the facts.



(Deposition of Jessie L. P. Berry.)

The COURT.—I think so. The answer will be stricken.

Mr. AMES.—Exception.

Q. Have you ever known Mr. Ward to refuse to serve anybody? A. Never.

Q. Where does he keep his stand in Papakura?

A. He usually stands in front of a little drygoods store there, across the street from his home, I think it is; it is near the postoffice.

Q. In Papakura? A. No, in Clevedon.

Q. I asked you about Papakura.

A. Just as near to the train as he can get there.

Q. What does he do at the station when the train arrives? A. He solicits for passengers.

Q. And you have seen him do that yourself?

A. Yes.

Q. Solicits passengers for where?

A. Clevedon and along the road from Papakura to Clevedon; and he picks up passengers on the way.

Q. And you say he solicits passengers to go from Papakura, at the railroad station, to Clevedon; does he also solicit passengers at Papakura, at the railroad station, to the ranches in and around Clevedon? A. He does when he is telephoned for.

Q. I am asking you if he does that at Papakura.

A. Yes, he does.

Q. I am asking you whether or not at Papakura, at the railroad junction, he solicits for business to take passengers not only to Clevedon, but also to the ranches in that neighborhood? [23]

(Deposition of Jessie L. P. Berry.)

A. I know he has taken me to the ranch; I cannot answer for anyone else.

Q. He is there soliciting anyone who comes?

A. Yes, at all trains.

Q. As a matter of fact, is there any other way for a person who has no private automobile of his own to get from the railroad station to Clevedon?

Mr. ALEXANDER.—We object to that on the ground that it is immaterial, irrelevant and incompetent, and has no bearing on any issue in this case.

The COURT.—You may ask her whether there are any other lines of motor-busses, or anything of that sort. Objection sustained.

Mr. AMES.—Q. Are there any other lines of motor-busses?

A. Yes, there is an opposition line.

Q. And there is competition between the two?

A. Yes.

Q. And it is quite a struggle, isn't it, to get passengers—

Mr. ALEXANDER.—We object to that as being outside the issues in the case.

The COURT.—Objection sustained.

Mr. AMES.—Exception.

Q. He also, does he not, solicits that trade going in the opposite direction, that is, to the railroad train?

A. You mean from Clevedon out the ranch way?

Q. Yes.

A. Yes. He operates that way as well. He has taken me from there.

Q. He has taken you several times?      A. Yes.

(Deposition of Jessie L. P. Berry.)

Q. And he has a regular fare, has he?

Mr. ALEXANDER.—We object to that as leading. I hate to interpose the objection, but counsel persists in leading questions.

The COURT.—Yes, but it is probably harmless. Change the form of the question.

Mr. AMES.—Q. What is the fare?

A. As nearly as I can remember I paid 30 shillings from the ranch to Clevedon. [24]

Q. And you have paid that more than once?

A. I think only once.

Q. That is, you, yourself, personally? A. Yes.

Q. Do you know whether or not that is his regular fare? A. I could not tell you.

Q. You don't know that? A. No.

Cross-examination.

Mr. ALEXANDER.—Q. Your experience was based on your own special arrangement with the taximan, wasn't it? A. Yes—

Mr. AMES.—Just a moment. I object to that as assuming something not in evidence.

Mr. ALEXANDER.—I withdraw the question.

Q. Is it not a fact that the driver who took you to the ranch did so by reason of a special contract you made with him?

Mr. AMES.—I object to that as assuming something not in evidence, that there was a special contract, and also calling for the conclusion of the witness as to what is or is not a special contract.

The COURT.—This is cross-examination; objection overruled.

(Deposition of Jessie L. P. Berry.)

Mr. AMES.—Exception.

A. Do you mean did I telephone to him?

Mr. ALEXANDER.—Q. Yes; did you make a special bargain with him to get out?

A. Oh, yes, naturally.

Q. And you don't know what he does with other people, do you? A. It is the same thing.

Q. They make bargains with him? A. Yes.

Q. The railroad is at Papakura, isn't it?

A. Yes.

Q. There is no railroad at Clevedon, is there?

A. No.

Q. And, consequently, he is not at the railroad station at Clevedon soliciting fares?

A. There is no railroad station there.

Q. There is none there. You made a mistake in your answer, and I wanted to straighten it out. Now, about the Humphries Davies ranch you spoke about, do you know the directions down there—east, or west? A. I couldn't tell you. [25]

Q. Suppose you were going from Auckland, you go from Auckland to Papakura? A. Yes.

Q. You get off the train at Papakura? A. Yes.

Q. Then the highway runs from Papakura to Clevedon? A. Yes.

Q. The Davies ranch is not on the road from Papakura to Clevedon, is it? A. No.

Q. It is further on, some nine miles beyond Clevedon? A. Yes.

Redirect Examination.

Mr. AMES.—Q. When you answered counsel's

(Deposition of Jessie L. P. Berry.)

question with reference to what he called a special contract, you don't mean to infer by that that this man does not carry everybody, do you?

A. Oh, yes, he carries anyone who telephones him.

Mr. ALEXANDER.—I move that the answer be stricken out as not responsive.

The COURT.—Answer it "Yes" or "No." Do you mean to infer by that that he does not carry everybody? A. I say, yes, he carries anyone.

The COURT.—The answer will stand.

Mr. AMES.—Q. He has a regular depot in Clevedon, too, has he not?

A. I suppose you would call it that. He has a stand there, a place where we go to get him; it is near the postoffice.

Q. And your understanding is that he will go and serve anyone, even those out in the outlying ranches?

Mr. ALEXANDER.—We object to that. What she understands is not competent.

The COURT.—Objection sustained.

Mr. AMES.—Exception. That is all.

Recross-examination.

Mr. ALEXANDER.—Q. Do you know whether he has a garage in Clevedon?

A. I could not tell you.

Q. You couldn't say? A. No. [26]

The COURT.—Q. Did I understand you to say that for the nine miles from the ranch to Clevedon he charged you 30 shillings?

A. No, the full distance, to Papakura.

(Deposition of J. Ward.)

Mr. AMES.—I ask that the depositions be opened, your Honor.

The COURT.—Let them be opened.

Mr. AMES.—I offer in evidence and will read to the jury the deposition of J. Ward, witness on behalf of plaintiff, taken pursuant to commission regularly issued out of this court.

The COURT.—Any objection to the form, or anything?

Mr. ALEXANDER.—No, your Honor.

The COURT.—Proceed with the deposition. All these details are not necessary.

Mr. AMES.—It is stipulated that the deposition is in the proper form.

#### DEPOSITION OF J. WARD, FOR PLAINTIFF.

Thereupon counsel read the deposition of J. WARD, a witness duly sworn and called on behalf of plaintiff.

##### Direct Interrogatories.

Q. What is your name and present address?

A. John Massey Ward.

Q. What is your occupation?

A. Motor proprietor.

Q. What was your occupation in the month of June, 1923?     A. Motor proprietor.

Q. If you carried on your business under a name other than your own, state what that name was.

A. Roberts & Ward.

Q. How long had you been engaged in that business?     A. Five years.

(Deposition of J. Ward.)

Q. Did you know Mrs. Edith P. Chenery prior to her death? A. No.

Q. On what day did Mrs. Edith P. Chenery meet her death? A. June 16, 1923.

Q. On that day were you in the business of operating a motor bus or busses for hire to the public? A. Yes. [27]

Q. Between what towns did you operate your motor bus or busses?

A. Clevedon and Papakura.

Q. Describe in detail the kind of a bus that you used in carrying passengers from Clevedon to Papakura.

A. Dodge passenger-car lengthened to add seat in center for extra passengers.

Q. How many passengers did it carry?

A. Nine comfortably.

Q. Did you charge a regular rate of hire for passengers between these two towns, and if so, what was your charge per passenger?

A. Three shillings single fare, six shillings return.

Q. Did you make regular trips between these two towns? A. Yes.

Q. At what town did your route connect with the railroad? A. Papakura.

Q. Were you in the business of conveying between these two towns any passengers for hire who should apply to you for carriage between these points? A. Yes.

Q. Did you serve the public in general?

(Deposition of J. Ward.)

A. Yes.

Q. What, if anything, did you carry upon your motor-bus in addition to passengers?

A. Parcels or small merchandise.

Q. Was it your business to deliver packages, bread, newspapers, baggage or any other articles and if so, what articles did you usually carry?

A. Small merchandise.

Q. Did your motor-bus travel over a regular route between Clevedon and Papakura?

A. Yes.

Q. Do you know Mr. George Humphreys-Davies?

A. Yes.

Q. If so, where does he live and how long have you known him?

A. Sandspit, nine miles from Clevedon. Have known him several years.

Q. Do you know his wife, Mrs. Ethel Humphreys-Davies? A. Yes.

Q. If so, where does she live and how long have you known her?

A. Sandspit, nine miles from Clevedon. Have known her several years.

Q. On the date of the death of Mrs. Chenery, where did you first see Mrs. Edith P. Chenery?

A. At Whakatiri, six miles from Clevedon, where I went to pick her up, June 16, 1923. [28]

Q. Who requested you to call for her?

A. She did by telephone.

Q. Where did you go to call for her?

A. At Whakatiri.



(Deposition of J. Ward.)

Q. Was Edith P. Chenery on the date mentioned a passenger in your motor-bus?

A. Yes, but not on the regular Clevedon-Papajura run.

Q. Where did you take Mrs. Edith P. Chenery after she left the home of Mr. and Mrs. Humphreys-Davies?

A. I took her from Whakatiri to the place of the accident.

Q. Who was with her?

A. Mrs. Hart, Mr. Spence, and a nurse whose name I cannot recall.

Q. Upon what conveyance did you carry this party from the residence of Mr. and Mrs. Humphreys-Davies to the town of Clevedon?

A. I carried them from Whakatiri to Clevedon in a Ford car, and Clevedon to the place of accident in a Dodge car.

Q. Did you at that town transfer your passengers to another vehicle? If so, to what vehicle?

A. Yes. To a Dodge car.

Q. How many passengers could ride in that motor-bus? A. Nine.

Q. What was the arrangement with your passengers as to the payment of fare?

A. As this was a special trip the charge would have been one pound fifteen shillings.

Q. Was that the rate for hire that you ordinarily charge?

A. From Whakatiri is a special fare, and a special fare rules after the usual run from Clevedon

(Deposition of J. Ward.)

to Papakura. The ordinary fare from Whakatiri to Clevedon is fifteen shillings and from Clevedon to Papakura is three shillings.

Q. When they got into your motor-bus at Clevedon, was there room for any additional passengers?

A. On account of passengers' luggage there was not room for anyone else.

Q. What luggage was carried upon the motor-bus?

A. Several bags and hampers. I do not remember the exact amount.

Q. Did you on that occasion have anything to deliver along the route such as newspapers, bread, etc.?

A. I had one loaf of bread and one newspaper.  
[29]

Q. If so, what did you have and where was it to be delivered?

A. I had one loaf of bread and one newspaper. They were not delivered.

Q. What route did you take between Clevedon and Papakura? A. Main road.

Q. Was this the regular route that you took for the purpose of carrying passengers to Papakura?

A. Yes.

Q. On June 16th, 1923, did anything unusual occur? If so, describe in detail exactly what took place.

A. Yes. While taking Mrs. Chenery and others to Papakura from Clevedon my car capsized, which resulted in the death of Mrs. Chenery.

(Deposition of J. Ward.)

Q. At the time of this occurrence, was Mrs. Edith P. Chenery a passenger for hire in your motor-bus? A. Yes.

Q. State in detail how Mrs. Edith P. Chenery met her death.

A. As I came around a corner to the place the accident happened, I saw the headlights of another car approaching. I dimmed my lights but the approaching car pulled up to let a passenger out with its lights full on. I put my lights on bright again to draw their attention to my car, and then dimmed them, but they still left their headlights on, and at that time another car approached with its headlights full on. It also pulled up beside the other car, and as I couldn't see where I was going I stopped. I applied my brakes and was waiting to see what they intended doing, my headlights were still dimmed and theirs were still full on. While I was waiting to see what they intended doing, the bank gave way with my car, which caused it to capsize into the creek. I remember very little after the car capsized, as I was pinned under the driving wheel of the car and pulled out in a semi-conscious condition.

Q. Was any one else injured in this accident? If so, who and to what extent.

A. Mrs. Hart and the nurse were slightly injured. [30]

Q. What happened immediately after the accident?

(Deposition of J. Ward.)

A. I have no recollection during my semi-conscious condition.

Q. Where was Mrs. Edith P. Chenery taken after the accident?

A. To Mr. Herbert Bull's house, close by.

Q. State if you know whether or not a doctor was called into attendance.

A. Yes, a doctor was called.

Q. If so, what was his name and address?

A. Dr. Walls, Clevedon.

Q. Who took charge of the body of Mrs. Edith P. Chenery after the accident?

A. Mrs. Humphrey Davies.

Cross-interrogatories.

Q. Was not your regular run between Clevedon and Papakura? A. Yes.

Q. Where was it that you first met Mrs. Chenery?

A. Whakatiri.

Q. Where was it that you first took her into your automobile for transportation to Papakura?

A. Whakatiri.

Q. Was the point where you first took Mrs. Chenery into your automobile for transportation to Papakura on your regular run from Clevedon to Papakura? A. No.

Q. How far was it from your regular run?

A. About six miles.

Q. In what direction is it from Clevedon to Papakura? A. West.

Q. In what direction from Clevedon is the place where you first met Mrs. Chenery and took her

(Deposition of J. Ward.)

into your automobile for transportation to Papakura? A. East.

Q. How far from Clevedon is the place where you first met Mrs. Chenery and took her into your automobile for transportation to Papakura?

A. About six miles.

Q. How far is it from Clevedon to Papakura?

A. About eight miles.

Q. How far is it from Clevedon to the point where you first met Mrs. Chenery and took her into your automobile? A. About six miles.

Q. Is it not a fact that you met Mrs. Chenery and took her into your automobile for transportation to Papakura on the Clevedon-Freshwater Road? [31]

A. No. A road we call the Maori Road, opposite direction from the Papakura Road.

Q. Did you have any regular run of automobiles on the Clevedon-Freshwater Road? A. No.

Q. Did you send automobiles to points on the Clevedon-Freshwater Road unless they were specially hired for such service? A. No.

Q. How did it happen that you were on the Clevedon-Freshwater Road the afternoon of the accident?

A. Do not know a road called the Freshwater. Was on the Maori Road to pick up Mrs. Chenery and party.

Q. Who asked you to transport Mrs. Chenery to Papakura? A. Mrs. Chenery by telephone.

Q. What payment was made for the service?

(Deposition of J. Ward.)

A. Payment has never been made.

Q. Who arranged for the payment?

A. Mrs. Chenery.

Q. Is it not a fact that Mrs. Chenery was one of a party of four that constituted her party and for whom transportation was desired from the Humphreys-Davies farm to Papakura? A. Yes.

Q. What was the time of your regular runs from Clevedon to Papakura?

A. Three trips daily leaving Clevedon at 7 A. M., 8:30 A. M. and 3:30 P. M.

Q. On the day of the accident had your automobiles left Clevedon for these regular runs?

A. Not that automobile.

Q. Did the accident occur on one of your regular runs from Clevedon to Papakura or some hours later? A. Some hours later.

Q. At what time did the last automobile leave on the regular run from Clevedon to Papakura?

A. 3:30 P. M.

Q. At what time did the automobile in which Mrs. Chenery was riding leave Clevedon for Papakura?

A. About half-past five in the afternoon. [32]

Q. What baggage was in the automobile belonging to Mrs. Chenery and the other members of her party?

A. Several bags and hampers. I do not remember the exact amount.

Q. Were there any other persons in the auto-

(Deposition of J. Ward.)

mobile besides Mrs. Chenery and the party that she was a member of and yourself? A. No.

Q. At the time of the accident in what different businesses did you engage?

A. No other business than motor proprietor.

Q. Is it not a fact that you had a general garage business at that time?

A. My partner had a garage business.

Q. Is it not a fact that you had several automobiles? A. Yes.

Q. Is it not a fact that you hired out automobiles and hired out privately various automobiles with drivers?

Mr. AMES.—I object to that question as immaterial, irrelevant and incompetent, and not connected up with this case, on this particular trip, in any way.

The COURT.—It might be, but this is cross-examination; objection overruled.

Mr. AMES.—Exception.

A. Never employed outside drivers. All driving done by either my partner or myself.

Q. Is it not a fact that you hired out automobiles privately in addition to the automobiles used on the regular run from Clevedon to Papakura?

Mr. AMES.—The same objection to all this line of testimony, your Honor.

The COURT.—It will be admitted over the objection.

Mr. AMES.—Exception.

A. Yes.

(Deposition of J. Ward.)

Q. Is it not a fact that in your business at the time of the accident a person could engage an automobile from you privately for transportation from Clevedon to Papakura? A. Yes. [33]

Q. Is it not a fact that you had at your garage automobiles that anyone could hire privately?

A. Yes.

Q. What was the regular fare on your regular run from Clevedon to Papakura?

A. Three shillings.

Q. What charge was made for transporting Mrs. Chenery from the Humphreys-Davies Farm to Papakura?

A. The amount usually charged was one pound, fifteen shillings.

Q. Is it not a fact that your last regular schedule run was to leave Clevedon at 3:30 in the afternoon? A. Yes.

Q. Is it not a fact that at 3:30 in the afternoon of the day of the accident one of your automobiles left on your regular run from Clevedon to Papakura?

Mr. AMES.—I object to that as calling for the conclusion of the witness and immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. AMES.—Exception.

A. Yes.

Q. Is it not a fact that the automobile leaving at 3:30 in the afternoon was the last regular run for that day from Clevedon to Papakura?

A. Yes.



(Deposition of J. Ward.)

Q. If the automobile involved in the accident had not been specially hired for the service would you have sent any automobile from Clevedon to Papakura after 3:30 in the afternoon of the day of the accident? A. No.

Q. Please state what was said to you when the arrangements were made for you to transport Mrs. Chenery and her party to Papakura?

A. Mrs. Chenery rang me on the phone and asked me if I would come and pick them up.

Q. By whom were these arrangements made?

A. Mrs. Chenery.

Q. Is it not a fact that the call came by telephone?

A. Yes.

Q. Who was it that called you by telephone?

A. Mrs. Chenery. [34]

Q. What did that person say to you?

A. She asked me to come and pick them up.

Q. What time did your regularly schedule automobiles leave Clevedon?

A. 7 A. M., 8:30 A. M., 3:30 P. M.

Q. Had all three of these regularly scheduled automobiles left on the day of the accident before Mrs. Chenery left Clevedon in your automobile?

A. Yes.

Q. Is it not a fact that at the time of the accident you were carrying on a general garage business?

Mr. AMES.—I object to the question as immaterial, irrelevant and incompetent as to what other business he may have had.

(Deposition of J. Ward.)

The COURT.—It is cross-examination; objection overruled.

Mr. AMES.—Exception.

A. My partner was.

Q. Is it not a fact that you were then doing general repair work of automobiles and selling parts and materials for automobiles?

A. My partner was.

Q. At the time of the accident how many men were employed by your firm?

A. One boy employed.

Q. Were you also at that time agent for certain automobiles?

Mr. AMES.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—It is cross-examination. Of course, if he was a common carrier, or was acting within the conditions of the policy, it would be immaterial, but this is cross-examination. Objection overruled.

Mr. AMES.—Exception.

A. My partner was.

Q. Is it not a fact that these did all the work of the garage, attended to the regular run from Clevedon to Papakura, and also looked out for private calls when automobiles were specially hired?

A. Yes. [35]

Q. Was it your practice at the time of the accident to hire out cars for private use with drivers?

Mr. AMES.—The same objection.

The COURT.—Objection overruled.

(Deposition of J. Ward.)

Mr. AMES.—Exception.

A. Yes.

Q. Was it part of your regular business?

A. Yes.

Q. Was it pursuant to that branch of your business that arrangements were made to take Mrs. Chenery and party from the Humphreys-Davies Farm to Papakura?

Mr. AMES.—I object to that as immaterial, irrelevant and incompetent. The foundation is that it was his partner's business.

Mr. ALEXANDER.—No, he didn't say that; he said that he took cars privately; he said it was part of his regular business.

Mr. AMES.—Also the further objection that even if that were so it would not make him out to be anything but a common carrier.

The COURT.—I suppose that is one of the issues in the case. I think he may answer the question. It will be controlled by instructions at the proper time.

Mr. AMES.—Exception.

A. Yes.

Q. Did you have any regular run to any place other than from Clevedon to Papakura? A. Yes.

Q. Did you know George Humphreys-Davies before the accident? A. Yes.

Q. Please state where he lives. A. Sandspit.

Q. Please state what, if anything, was said to you by Mrs. Chenery before the accident.

A. She asked what time the next train left Papa-

(Deposition of J. Ward.)

kura, and I told her twenty minutes to seven. She then said we would have plenty of time to drive slowly, as she was terribly nervous and that she was afraid to get in a motor car, boat or cart. [36]

Q. State what you observed of Mrs. Chenery's physical condition before the accident.

A. She seemed of a nervous disposition.

Q. State what you observed of Mrs. Chenery's mental condition before the happening of the accident. A. Nothing.

#### DEPOSITION OF GEORGE HUMPHREYS- DAVIES, FOR PLAINTIFF.

Thereupon counsel read the deposition of GEORGE HUMPHREYS-DAVIES, a witness duly sworn and called on behalf of plaintiff.

##### Direct Interrogatories.

Q. What is your name and address?

A. George Humphreys-Davies, Freshwater, Clevedon, New Zealand.

Q. What is your occupation?

A. Sheep-farmer.

Q. What relation were you, if any, to Edith P. Chenery? A. Brother-in-law.

Q. Did you know Edith P. Chenery in her lifetime? A. Yes.

Q. Was she a visitor at your house near Clevedon, New Zealand, just prior to the 16th day of June, 1923? A. Yes.

Q. On what day did she leave your house?

(Deposition of George Humphreys-Davies.)

A. June 16th, 1923.

Q. Was she on that day in sound condition mentally and physically so far as you observed.

A. She was.

Q. Were there any indications that she was not in sound condition mentally and physically?

A. None whatever.

Q. On that day where did she go?

A. Towards Auckland.

Q. Who went with her?

A. Miss Edge, Mrs. Hart, Mr. Spence.

Q. Upon what conveyance was Mrs. Chenery and those with her conveyed from your house?

A. A farm cart belonging to myself to meet Ward's taxi at E. Brown's, a distance of about three miles.

Q. Was Mrs. Chenery aboard this conveyance as a passenger for hire?

A. Not on the cart, but for hire on Ward's taxi.

Q. By whom was this conveyance operated?

A. The cart by a farm servant and the taxi by J. Ward.

Q. Where does J. Ward live?

A. In Clevedon.

Q. What was his business in the month of June, 1923? [37]

A. Motor proprietor, licensed by Papakura Town Board to carry passengers for payment.

Q. Between what points does J. Ward operate a motor-bus? A. Clevedon and Papakura.

Q. Have you ever ridden in the motor-bus opera-

(Deposition of George Humphreys-Davies.)

ted by J. Ward between Clevedon and Papakura?  
If so, approximately how many times?

A. Yes. Probably thirty-five to forty times.

Q. Describe in detail what kind of a vehicle it was.

A. Dodge, chassis specially lengthened to hold extra seat between ordinary front and back seats. Specially built for hire service.

Q. What is the charge made by J. Ward for carrying passengers between Clevedon and Papakura?

A. Three shillings and sixpence single fare and six shillings return. The fares fluctuate according to competition.

Q. State, if you know, whether or not J. Ward has a regular route between Clevedon and Papakura for the carrying of passengers. A. Yes, he has.

Q. Do you know whether or not J. Ward makes a business of carrying anything besides passengers on this route? If so, what does he carry?

A. Bread for the Papakura bakery every morning except Sundays, parcels and small baggage, independent of passengers.

Q. Does he make a practice of carrying bread, newspapers, baggage or other articles between these two points for hire? A. Yes.

Q. State whether or not this conveyance upon which Mrs. Chenery left your house on June 16, 1923, as a passenger for hire, was a public or private conveyance.

Mr. ALEXANDER.—We object to that on the following grounds: The witness was not there. It

(Deposition of George Humphreys-Davies.)

was three miles from his home. He could not have known what the facts were, because he was not there. It calls for the conclusion of the witness. It is leading. The transportation took place three miles from his home and he was not there. [38]

The COURT.—Objection sustained.

Mr. AMES.—Your Honor, he could testify as to what J. Ward had in the way of a motor-bus.

The COURT.—He has testified already as to his public character in so far as it is generally known. I think when you reduce him to the particulars of this occasion he could not have known the details. Objection sustained.

Mr. AMES.—Exception.

Q. Does J. Ward serve the public generally in the carrying of passengers, packages and other articles?

Mr. ALEXANDER.—I object to the question as calling for the legal conclusion of the witness, and as leading.

The COURT.—No, I think not. Objection overruled. He has already shown he served the public generally.

Mr. ALEXANDER.—Exception.

A. Yes.

Q. When did you next see Mrs. Edith P. Chenery after she left your house on the 16th of June, 1923?

A. About 9 P. M. on the 16th.

Q. Where did you next see her?

A. At Bull's Farm.

Q. On that occasion, was she alive or dead?

(Deposition of George Humphreys-Davies.)

A. Dead.

Cross-interrogatories.

Q. Where did you live on the 16th of June, 1923?

A. Freshwater, near Clevedon.

Q. Who was visiting at your house on that date?

A. Mrs. Chenery, Mrs Hart, Nurse Patton, Nurse Edge and Mr. Spence.

Q. Who was at your house besides Mrs. Chenery?

A. All the above and Mrs. Humphreys-Davies.

Q. Did you call up J. Ward and arrange for transporting these persons from your farm to Papakura? A. I did not.

Q. Is your farm on the road that runs from Clevedon to Papakura?

A. On a continuation of the road. [39]

Q. Is your farm on the run that was made regularly by Ward from Clevedon to Papakura?

A. No.

Q. In what direction is Papakura from Clevedon?

A. On the remote side from my farm.

Q. In what direction is your farm from Clevedon?

A. On the side remote from Papakura.

Q. Is there any regular run from your farm or near it to Papakura?

A. From Clevedon.

Q. How far is your farm from Clevedon?

A. About nine miles.

Q. Is it not a fact that your farm is on an entirely different road than the road which runs from Clevedon to Papakura?

A. On the same road but a continuation.



(Deposition of George Humphreys-Davies.)

Q. At what point was it that Mrs. Chenery first met J. Ward and began the ride in his automobile?

A. E. Brown's house.

Q. How far is that point from the beginning of his regular run from Clevedon to Papakura?

A. Six miles.

Q. What was the manner of transportation of Mrs. Chenery to your farm?

A. By rail to Papakura. Ward's taxi to Brown's and Brown's farm cart to Freshwater.

Q. Why did she not go back by water?

A. Because my launch was not available.

Q. State her mental condition in regard to the return trip? A. Exceedingly cheerful.

Q. How many persons were in Mrs. Chenery's party? A. Three besides herself.

Q. Is it not a fact that Miss Edge was there and Mrs. Hart and Mr. Spence and also Mrs. Chenery?

A. Yes.

Q. How much baggage did each of them take with them in the automobile on the trip to Papakura?

A. Hand baggage only.

Q. Was there a nurse in the automobile before the accident? A. Yes.

Q. Who was that nurse? A. Miss Edge. [40]

Mr. AMES.—Now, I renew my request to have the answer to question 23 allowed, on the ground that Mr. Alexander's objection that no proper foundation has been laid has been obviated by the cross-examination.

(Deposition of Ethel Humphreys-Davies.)

The COURT.—What is there in the cross-examination?

Mr. AMES.—He asked several questions about how she went.

The COURT.—Any objection?

Mr. ALEXANDER.—Yes, your Honor. I simply fixed the places of these different points.

The COURT.—Motion denied.

Mr. AMES.—Exception.

#### DEPOSITION OF ETHEL HUMPHREYS- DAVIES, FOR PLAINTIFF.

Thereupon counsel read the deposition of ETHEL HUMPHREYS-DAVIES, a witness duly sworn and called on behalf of plaintiff.

Q. What is your name and address?

A. Ethel Dorothy Humphreys-Davies.

Q. What is your occupation? A. Housewife.

Q. What relation were you, if any, to Edith P. Chenery? A. Sister.

Q. Did you know Edith P. Chenery in her lifetime? A. Yes.

Q. What was her age on June 16, 1923, the date of her death? A. About fifty-four.

Q. Was she a visitor at your house near Clevedon, New Zealand, just prior to the 16th day of June, 1923? A. Yes.

Q. On what day did she leave your house?

A. June 16th, 1923.

Q. Was she on that day in sound condition mentally and physically so far as you observed?

(Deposition of Ethel Humphreys-Davies.)

A. Yes.

Q. Were there any indications that she was not in sound condition mentally and physically?

A. No.

Q. On that day where did she go?

A. To Clevedon, enroute to Auckland.

Q. Who went with her?

A. Mrs. Hart, Mr. Spence and Miss Edge. [41]

Q. Upon what conveyance was Mrs. Chenery and those with her conveyed from your house?

A. In a farm cart driven by a Maori as far as the unmetallized road. Then met by a Ford driven by Mr. J. Ward.

Q. Was Mrs. Chenery aboard this conveyance as a passenger for hire?

A. Not upon the cart but the car.

Q. By whom was this conveyance operated?

A. The car, J. Ward.

Q. Where does J. Ward live? A. Clevedon.

Q. What was his business in the month of June, 1923?

A. Garage and taxi and motor-bus service.

Q. Between what points does J. Ward operate a motor-bus? A. Clevedon and Papakura.

Q. Have you ever ridden in the motor-bus operated by J. Ward between Clevedon and Papakura? If so, approximately how many times?

A. Yes. Over twenty times.

Q. Describe in detail what kind of a vehicle it was.

A. Dodge with specially lengthened chassis.

Q. What is the charge made by J. Ward for

(Deposition of Ethel Humphreys-Davies.)

carrying passengers between Clevedon and Papakura?

A. Three shillings and six pence single fare and six shillings return.

Q. State if you know whether or not J. Ward has a regular route between Clevedon and Papakura for the carrying of passengers. A. Yes.

Q. Do you know whether or not J. Ward makes a business of carrying anything besides passengers on this route? If so, what does he carry?

A. Small parcels, papers, bread, small baggage.

Q. Does he make a practice of carrying bread, newspapers, baggage or other articles between these two points for hire? A. Yes.

Q. State whether or not this conveyance upon which Mrs. Chenery left your house on June 16, 1923, as a passenger for hire, was a public or private conveyance. [42]

Mr. ALEXANDER.—Objected to as calling for the legal conclusion of the witness, as leading, and it does not appear that she knows.

The COURT.—Objection sustained.

Mr. AMES.—Exception.

Q. Does J. Ward serve the public generally in the carrying of passengers, packages and other articles?

Mr. ALEXANDER.—Objected to as leading and calling for the legal conclusion of the witness.

The COURT.—Objection overruled.

Mr. ALEXANDER.—Exception.

A. Yes.

(Deposition of Ethel Humphreys-Davies.)

Q. When did you next see Mrs. Edith P. Chenery after she left your house on the 16th of June, 1923?

A. At Mrs. Bull's about 10 P. M. June 16th, 1923.

Q. Where did you next see her?

A. At the undertakers.

Q. On that occasion, was she alive or dead?

A. Dead.

Q. Please give the name and address of the physician who attended Mrs. Chenery after the accident.

A. Dr. Walls of Clevedon and Dr. Page of Papakura.

Cross-interrogatories.

Q. Where did you live on the 16th of June, 1923?

A. Freshwater, near Clevedon, New Zealand.

Q. Who was visiting at your house on that date?

A. Mrs. Chenery, Mrs. Hart, and Mr. Spence and Miss Patton.

Q. Who was at your house besides Mrs. Chenery?

A. Mrs. Hart, Mr. Spence, Miss Edge, Miss Patton and my husband Captain Humphreys-Davies.

Q. Did you call up J. Ward and arrange for transporting these persons from your farm to Papakura? A. Yes.

Q. Is your farm on the road that runs from Clevedon to Papakura? A. No. [43]

Q. Is your farm on the run that was made regularly by Ward from Clevedon to Papakura?

A. No.

Q. In what direction is Papakura from Clevedon?

A. On the remote side from Auckland.

(Deposition of Ethel Humphreys-Davies.)

Q. In what direction is your farm from Clevedon?

A. On the remote side from Clevedon.

Q. Is there any regular run from your farm or near it to Papakura?

A. Not nearer than Clevedon.

Q. How far is your farm from Clevedon?

A. Nine miles.

Q. Is it not a fact that your farm is on an entirely different road than the road which runs from Clevedon to Papakura?     A. Yes.

Q. At what point was it that Mrs. Chenery first met J. Ward and began the ride in his automobile?

A. In front of E. Brown's house about three miles from my house.

Q. How far is that point from the beginning of his regular run from Clevedon to Papakura?

A. Six miles—about.

Q. What was the manner of transportation of Mrs. Chenery to your farm?

A. Train to Papakura, Ward's car to Mr. Brown's house Mr. Brown's cart to the farm.

Q. State her mental condition in regard to the return trip?     A. Very cheerful.

Q. How many persons were in Mrs. Chenery's party?     A. Four.

Q. Is it not a fact that Miss Edge was there and Mrs. Hart and Mr. Spence and also Mrs. Chenery?

A. Yes.

Q. How much baggage did each of them take with them in the automobile on the trip to Papakura?

A. Hand baggage only.

(Deposition of Ethel Humphreys-Davies.)

Q. Was there a nurse in the automobile before the accident?     A. Yes.

Q. Who was that nurse?     A. Miss Doria Edge.

Mr. AMES.—Now, I would like to renew my offer of question No. 24 on direct examination of Mrs. Humphreys-Davies on the ground that the foundation was laid in question 12 of the cross-interrogatories. [44]

Mr. ALEXANDER.—It is exactly the same situation, your Honor.

The COURT.—Motion denied; objection sustained.

Mr. AMES.—Exception.

Mr. AMES.—That is our case.

The COURT.—Proceed for the defense.

Mr. ALEXANDER.—We rest. We move the Court for a directed verdict. I wish to present the motion, with the authorities in support of it, and ask if your Honor wishes to keep the jury here during the argument.

The COURT.—I doubt if there is very much in this case but a law question. You may proceed.

Mr. ALEXANDER.—If your Honor please, at this time, on behalf of the defendant we move for a directed verdict in its favor upon the ground that the allegations of the complaint have not been sustained, and upon the further ground that it appears from the testimony taken that the plaintiff is not entitled to a recovery in this action.

The COURT.—At the conclusion of the evidence in this case the defense moved that the jury be di-

rected to return a verdict in its favor on the ground that the evidence had failed to make out a case which would support any verdict for the plaintiff.

The action is upon an insurance policy, which has a not unusual provision, namely, that while it insures the life of the husband for the benefit of the wife, it contains a provision insuring the wife to a certain extent, namely, while a passenger in or on a public conveyance, including platform, steps, or running-board—words indicating somewhat the character of a public conveyance, provided by a common carrier for passenger service; that is to say, if the wife is injured or killed while a passenger in or on a public conveyance provided by a common carrier for passenger [45] service, the insurance company will pay a certain amount, depending upon the extent of the injuries. The beneficiary, the wife in this case, was killed, according to the evidence, under circumstances that have been detailed, namely, while riding in an automobile from near the farm where she was a visitor, through one town, Clevedon, to another town on the railroad. The contention of the plaintiff is that she was thus injured while a passenger on a public conveyance provided by a common carrier for passengers. The case has been argued, the evidence is without conflict, there can be only one question involved in it, and that is whether or not the conveyance was a public conveyance provided by a common carrier at that particular time and place where the wife was injured. Both parties have argued this matter and submitted a good deal of



law, but there are a few considerations the Court deems controlling, and will state them briefly.

In the first place, while it is true that insurance policies, where they are ambiguous, are to be construed as favorably in behalf of the insured and the beneficiary as they will bear, the Court finds nothing whatever ambiguous in this particular policy. A public conveyance provided for passengers by a common carrier has a well-defined and settled meaning, namely, a conveyance provided by one who is a common carrier for the indiscriminate use of the public, not necessarily between fixed points, or at a settled price, but one which he is under obligation as a common carrier to render service with when called upon by any of the patronizing public. The reasons for this limitation in the policy—for injuries received by the beneficiary while in a public conveyance provided by a common carrier of passengers, is very plain, namely, a public conveyance; and a common carrier is required to exercise a very much higher degree of diligence for the safety of the passenger than a private conveyance will exercise as required by law, and, therefore, the insurer—the company—in order to secure [46] to itself as much protection as possible in this collateral insurance of the wife, limits the circumstances under which it will pay to the one where she is injured in one of these conveyances operated by a common carrier, and those under and subject to a very high degree of care and diligence on the part of those who convey; it was not willing to accept the responsibility of a mere private carrier,

and in a private conveyance, fròm whom is not exacted that same degree of care and diligence. So much for that.

Now, the distinction between a private carrier and a common carrier is well settled. In some instances either may deviate from their settled character and perform the functions of another. A private carrier is one who usually will carry on special contracts, when he sees proper; does not hold himself out to be patronized by the public generally, and who is not bound to accept any passenger or engage in any contract of carriage unless he sees fit. A common carrier, however, is one whose labors are exclusively devoted to carrying the public on their demand. He is under a burden and a duty to carry anybody who will come along and patronize him at the times fixed, of course subject to time tables, and subject to his rates, and at a price fixed, may also on occasion be immaterial. He is not necessarily limited to a definite rate or to a fixed termination, but he is bound to give service to the public. It is not left to his whim to select his customers. The law in respect to taxicabs, automobiles and carriers of that character is not altogether clear, and not altogether settled, for the reason that the same carrier may serve partially as a private carrier and partially as a common carrier. For instance, in the case of a taxicab company, which is licensed by the city, which has an engagement with a railroad terminal, we will say, that is a case that the Supreme Court has passed on, to carry passengers from railroad

depots to hotels, or any other place in the city, and generally at rates fixed or subject to be fixed by the governing authority of the city: In that case [47] the taxicab man is a common carrier; he is bound to take any passenger at the depot who behaves himself and is a fit subject for carriage, and who will pay the fare. If the fares fixed by the city do not cover all points in the city, or all distances, there would be special contracts on occasion. But this same taxicab man, aside from the times when he is receiving passengers from depots and carrying them about the city, may operate as a private carrier. He may engage himself to anyone who wants to hire him on a special contract, for a special trip, at a special price, for a special number of passengers. To that extent he is a private carrier. He does not find himself under the obligation again to exercise the same high degree of care and diligence for the safety of the passenger that the common carrier does. His liabilities and his rights depend entirely upon the separate contract he makes with the individual.

The Supreme Court of the United States has dealt with the proposition now before the Court in *Terminal Association vs. Kutz*, 241 U. S., where they drew that distinction and pointed it out, that the taxicab man—owner—proprietor—in so far as he was subject to contract to wait at hotels and carry passengers from and to hotels, or to wait at the railroad terminal and carry from or to the railroad, was a common carrier. But wherein he received calls at his own garage, over the phone or

otherwise, for special engagements, and special trips, at contract rates to be fixed by himself, he was performing a duty simply within the bounds of private contract, and was not a common carrier.

Of course, that question involved the question as to how far the city could control and govern his actions as a public utility; but the fact that he was held not to be within the law as to a public utility in respect to his private engagements, was dependent entirely upon the fact that to that extent he was not by the Court held to be a common carrier. [48]

Now, we cannot go any further for authority than the Supreme Court of the United States. This Court is subject to it. Its decisions are subject to review, in the last analysis, by that court, and it is our duty to follow that court.

Now, fitting the law to the circumstances of this case, here is a man, Ward, whom the evidence shows was a common carrier between the town of Clevedon and the railroad terminal; he was licensed by the town to carry passengers between those two places; he had a time-table; he performed three round trips a day. There was nothing to indicate that he was obliged to perform any other trips. Just exactly the same as a railroad which has its time-table, those who want to travel must conform to the railroad's time, if they want to take advantage of its powers as a common carrier. The Court would not say that a railroad running a special train on a special occasion would not be a common carrier, but, again, that is different from this case. Ward was not obliged to go beyond the town of

Clevedon to pick up passengers. Those who wanted to patronize him would come there. He would pick up any on the road between Clevedon and Papakura, but he was not obliged to and could go elsewhere. There is evidence that on one occasion, or two, perhaps, he had visited this ranch. But whether or not under the same circumstances as the case and the occasion involved in this case, does not appear. On this particular day he received a call from one of the ladies at the ranch. This ranch was six miles beyond the town of Clevedon, which was the end of his regular run. He received a call out of his regular hours. He was asked if he would come and take a party to the railroad, and he answered that he would, and he did go. He made a special trip, for a special party, at a special time, off of his regular run, and for special compensation; whereas his regular price was 3 shillings for this trip for four passengers, he was to get something like 35 shillings—a very handsome and substantial increase. It is true [49] that where the accident occurred, and after he had received his party and was driving from Clevedon to Papakura, he was then on his regular run, but still it was a single, indivisible and entire trip—a single, individual and entire contract and engagement, made not for his regular run, but to go far beyond it and take a special party on a special occasion and at a special price.

The Court cannot see that this case does not come clearly within the rule laid down by the Supreme Court in the Terminal Case, 241 U. S. In other

words, at this time and place whère this unfortunate lady met her death, she was not riding in a public conveyance provided by a common carrier of passengers. He had laid aside, for the time being, his character as a common carrier. The conveyance at the time bore, not the character of a public conveyance, but to all intents and purposes was private for this particular party. Ward was a private carrier. The principles involved in the case are adverted to in the case of Santa Fe Railway Co., 228 U. S., where the Court points out that even a common carrier may occasionally lay aside his capacity of common carrier, enter the domain of a private carrier, and be held only to his contractual obligations.

For these reasons, holding, as I do, that the policy, when it said "common carrier in a public conveyance," meant what it said, to give to the insurance company the benefit of the high degree of diligence exacted of a common carrier, the Court is bound to and does hold that this case is not within the policy.

The motion for a directed verdict is granted.

Gentlemen of the Jury, there is nothing for you to decide in the case. It is simply a question of law. The juror in the end seat will sign the verdict.

Mr. AMES.—I desire to take an exception to the ruling of the court.

The COURT.—It will be noted. The case presents a very [50] small record, and it is one that

is very well worth while taking up and having the Court of Appeals pass upon it.

Mr. AMES.—Yes, your Honor, we intend to do that. We take an exception to the verdict and ask that the jury be polled.

The COURT.—No polling is necessary. They render a verdict in accordance with the ruling of the court. The jury could not dissent. [51]

### EXHIBIT I.

In the Superior Court of the State of California in and for the City and County of San Francisco.

#### LETTERS OF ADMINISTRATION, WITH THE WILL ANNEXED.

Department No. 10, Probate.

No. 36,865 New Series.

State of California,  
City and County of San Francisco,—ss.

The last Will of Edith P. Chenery, deceased, a copy of which is hereto annexed, having been proved and recorded in the Superior Court of the City and County of San Francisco and Leonard Chenery, is hereby appointed Administrator with the Will Annexed.

WITNESS, H. I. MULCREVY, Clerk of the Superior Court of the State of California in and for the City and County of San Francisco, with the seal of said court affixed this 12th day of July, A. D. 1923.

By order of the Court:

[Seal]

H. I. MULCREVY,  
Clerk.

By A. R. Phillips,  
Deputy Clerk.

State of California,  
City and County of San Francisco,—ss.

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California; and that I will faithfully discharge the duties of Administrator with the Will Annexed of the Estate of Edith P. Chenery, Deceased, according to law.

LEONARD CHENERY.

Subscribed and sworn to before me this 12th day of July, 1923.

A. R. PHILLIPS,  
Deputy County Clerk. [52]

Office of the County Clerk,  
City and County of San Francisco,—ss.

I, H. I. Mulcrevy, County Clerk of the City and County of San Francisco, and *ex-officio* Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true and correct copy of the Letters of Administration with the Will Annexed in the Matter of the Estate of Edith P. Chenery, Deceased, now on file and of record in my office, and I further certify that the same have not been revoked or vacated, but are still of full force and effect.



WITNESS my hand and the seal of said Court  
this 3d day of August, A. D. 1923.

[Seal]

H. I. MULCREVY,  
Clerk.

By S. I. Hughes,  
Deputy Clerk.

[Endorsed]: Recorded M. B. — Page —.  
No. 36,865. Dept. 10. Probate. In the Superior  
Court of the State of California, in and for the  
City and County of San Francisco. In the Matter  
of the Estate of Edith P. Chenery, Deceased. Cer-  
tified Copy of Letters of Administration With the  
Will Annexed.

[Endorsed]: Duplicate. Filed July 12, 1923.  
H. I. Mulcrevy, Clerk. By A. R. Phillips, Deputy  
Clerk.

## EXHIBIT II.

This Policy Provides Indemnity for Loss of Life,  
Limb, Sight or Time by Accidental Means to  
the Extent Herein Provided.

Maximum Combination

Accident Policy No. 389,194  
Form M. R.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, OF LONDON,  
ENGLAND,

IN CONSIDERATION OF Twenty-five and  
00/100 Dollars premium, and of the warranties in  
the "Schedule of Warranties" hereinafter con-  
tained, does hereby insure the person named therein

as the Assured against Bodily Injuries sustained during the term of this Policy, solely and independently of all other causes through external violent and accidental means (suicide whether sane or insane is not covered), as specified in the following schedule, subject to the Conditions hereinafter set forth:

#### SCHEDULE OF INDEMNITIES.

The Principal Sum of this Policy is Seventy-five Hundred and 00/100 Dollars (\$7,500.00).

##### SECTION A.

##### SINGLE INDEMNITY—DEATH, DISMEMBERMENT AND LOSS OF SIGHT.

If such injuries shall wholly and continuously disable the Assured from the date of accident from performing any and every kind of duty pertaining to his occupation, and during the period of such continuous disability, but within Two Hundred Weeks from date of accident, shall result independently and exclusively of all other causes in any one of the losses enumerated in this Section, or within ninety days from the date of the accident, irrespective of total disability, result in like manner in any one of such losses, the Corporation will pay the sum set opposite such loss and in addition weekly indemnity as provided in Section B to the date of death, dismemberment, or loss of sight; but only one of the amounts so specified and the additional weekly indemnity will be paid for injuries resulting from one accident. [53]

FOR LOSS OF

.....	The Principal Sum
And in addition cost of transportation of the remains from the place (city or town) where death occurred to place (city or town) of burial, but not to exceed one-twentieth of Principal Sum.	
Hand by Severance at or Above the Wrists.....	The Principal Sum
Foot by Severance at or Above the Ankles.....	The Principal Sum
Hand at or Above the Wrist and One Foot at or Above the Ankle by Severance.....	The Principal Sum
Sight of Both Eyes if Irrecoverably Lost.....	The Principal Sum
Sight of One Eye if Irrecoverably Lost and One Hand at or Above the Wrist by Severance.....	The Principal Sum
Sight of One Eye if Irrecoverably Lost and One Foot at or Above the Ankle by Severance.....	The Principal Sum
Hand by Severance at or Above the Wrist.....	One-half of Principal Sum
Foot by Severance at or Above the Ankle.....	One-half of Principal Sum
Sight of One Eye if Irrecoverably Lost.....	One-half of Principal Sum

The payment in any such case shall end this Policy, but the same shall not affect any claim under Section H (Beneficiary Benefits) in respect of injuries sustained prior to such payment.

SECTION B:

SINGLE WEEKLY INDEMNITY — TOTAL AND PARTIAL DISABILITY.

If such injuries shall not result in any of the losses mentioned in Section A, but shall immediately, continuously and wholly disable and prevent the Assured from performing any and every kind of duty pertaining to his occupation, the Corporation will pay him so long as he lives and suffers such total disability, a WEEKLY INDEMNITY of TWENTY-FIVE DOLLARS (\$25.00)

Or, if such injuries shall not wholly disable the Assured, as [54] above, but shall immediately, or

immediately following total disability, and continuously disable and prevent him from performing one or more important daily duties pertaining to his occupation, the Corporation will pay for the period of such partial disability, not exceeding 30 consecutive weeks, a Weekly Indemnity of One-Half the sum stipulated in this Section for total disability.

No payment of weekly indemnity shall be made in the case of any disability specified in Section A, except as therein provided.

#### SECTION C.

##### ELECTIVE BENEFITS.

If the Assured shall sustain an injury as hereinbefore defined, and which is named in the "Schedule of Injuries" hereinafter contained, he may elect to receive the amount of indemnity set opposite to said injury in said Schedule in lieu of all other indemnity, except for Surgical Operations or Hospital Expenses to which Assured may be entitled, provided written notice of his election is given to the Corporation within twenty days from the date said injury is received, but not more than one of said amounts shall be payable for injuries sustained in any one accident.

#### SECTION D.

##### DOUBLE INDEMNITIES.

If the Assured shall sustain such injuries while a passenger in or on a public conveyance (including the platform, steps or running-board thereof) provided by a common carrier for passenger ser-

vice (including Pullman cars); or while riding in a passenger elevator or escalator; or in consequence of the burning of a building while the Assured is therein, or caused by the collapse of the outer walls of a building while the Assured is therein, or caused by a stroke of lightning, or caused by the explosion of a steam boiler, or caused by a cyclone or tornado; then the Corporation will pay double the amount otherwise payable under the preceding Sections. [55]

#### SECTION E.

#### INDEMNITY FOR MEDICAL OR SURGICAL TREATMENT OF MINOR INJURIES.

If such injuries shall not result in disability, but shall require medical or surgical attention, the Corporation will reimburse the Assured for the cost thereof to an amount not exceeding One Week's Single Indemnity as provided under Section B, provided the physician's or surgeon's bill is furnished the Corporation within thirty days from the date of the accident.

#### SECTION F.

#### SUNSTROKE, FREEZING, HYDROPHOBIA OR ASPHYXIATION.

Any one of the following, namely,—sunstroke, freezing, hydrophobia or asphyxiation suffered through accidental means (suicide whether sane or insane is not covered) shall be deemed bodily injuries within the meaning of this Policy.

## SECTION G.

## BLOOD-POISONING.

Blood-poisoning resulting directly from bodily injuries shall be deemed to be included in the said term, bodily injuries.

## SECTION H.

## BENEFICIARY BENEFITS.

If one person only is specifically named as the Beneficiary in the "Schedule of Warranties" hereinafter contained and such person is not under 18 or over 60 years of age, and is in sound condition mentally and physically; then and not otherwise, this Policy shall also insure such Beneficiary against bodily injuries sustained during the term of this Policy, solely and independently of all other causes through external, violent and accidental means (suicide whether sane or insane is not covered), and received: while a passenger in or on a public conveyance (including the platform, steps or running-board thereof) provided by a common carrier for passenger service (including Pullman cars); or while riding in a passenger elevator or escalator; or in consequence of the burning of a building while the Beneficiary is therein, as follows: [56]

FOR LOSS OF

Life .....	Two-thirds of Principal Sum
Both Hands by Severance at or Above the Wrists.....	Two-thirds of Principal Sum
Both Feet by Severance at or Above the Ankles.....	Two-thirds of Principal Sum
One Hand at or Above the Wrist and One Foot at or Above the Ankle by Severance.....	Two-thirds of Principal Sum
Entire Sight of Both Eyes if Irrecoverably Lost.....	Two-thirds of Principal Sum
Entire Sight of One Eye if Irrecoverably Lost and One Hand at or Above Wrist by Severance.....	Two-thirds of Principal Sum
Entire Sight of One Eye if Irrecoverably Lost and One Foot at or Above Ankle by Severance.....	Two-thirds of Principal Sum
Other Hand by Severance at or Above the Wrist.....	One-third of Principal Sum
Other Foot by Severance at or Above the Ankle.....	One-third of Principal Sum
Entire Sight of One Eye if Irrecoverably Lost.....	One-third of Principal Sum

(One Loss Only is Payable for One Accident.)

If the Beneficiary shall sustain an injury in the manner defined in this Section and such injury shall within ninety days from the date of accident necessitate an operation as named in the "Schedule of Operations" hereinafter contained, and the same shall be performed, the Corporation will pay One-Half of the sum specified in said Schedule for such operation; but no payment shall be made for more than one operation necessitated by injuries sustained in any one accident.

The amount payable in the event of the loss of life of the Beneficiary shall be paid to the Legal Representatives of the Beneficiary; the payment of any other sum provided for in this Section shall be made to the person insured as Beneficiary. [57]

SECTION I.

SURGICAL OPERATIONS.

If by reason of such injuries any of the operations named in the "Schedule of Operations" shall be performed upon the Assured by a surgeon within

ninety days from the date of the accident, the Corporation will pay to the Assured, in addition to the indemnity herein provided, the sum specified for such operation in said Schedule, but payment shall not be made for more than one operation necessitated by injuries sustained in one accident.

#### SECTION J.

##### HOSPITAL EXPENSES.

If a bodily injury for which indemnity is payable under this policy, is suffered by the Assured, and if on account of said bodily injury and within ninety days from the date of the accident, the Assured is removed to a regular hospital, provided that no claim is made under Section I, the Corporation will pay the Assured (in addition to the indemnity payable for said injury) for the period, not exceeding ten weeks, during which the Assured is necessarily confined in the said hospital, the amount expended by him on account of the hospital charges, but not exceeding per week One-Half the weekly indemnity specified in Section B.

#### SECTION K.

##### IDENTIFICATION.

If the Assured by reason of injury or illness shall be physically unable to communicate with friends, the Corporation, upon receipt of a telegram or other message giving the number of this Policy, will immediately transmit to his relatives or friends any information respecting him, and will defray all expenses not exceeding one hundred dollars, necessary to put the Assured in the care of friends. [58]



CONDITIONS.

1. If the Assured is injured, fatally or otherwise, after having changed his occupation to one classified by this Corporation as more hazardous than that herein stated (except ordinary duties about his residence, or while engaged in recreation), the Corporation's liability shall be only for such proportion of the benefits named in this Policy as the premium paid by him would have purchased at the rate and within the limits fixed by the corporation, for such more hazardous occupation according to its rates and classification of risks filed prior to the occurrence of the injury for which indemnity is claimed, with the State official having supervision of insurance companies in the State where the Assured resides at the time this Policy was issued.

2. Indemnity for loss of life of the Assured shall be paid to the Beneficiary named in the "Schedule of Warranties," if surviving, otherwise to the Legal Representatives of the Assured.

3. This insurance shall not cover injuries fatal or nonfatal, sustained while participating in or in consequence of having participated in aeronautics, or injuries fatal or non-fatal, resulting directly or indirectly, wholly or partly, out of the operations of war.

4. This Policy shall be void if any like Policy on the Assured has been issued by this Corporation and is in force at the date hereof, unless this Policy contains an endorsement signed by the Corporation's Manager for the United States that such prior policy may be continued in force. The Corporation shall

not be presumed or held to know of the existence of any previous Policy, and in such case the issue of this Policy shall not be deemed a waiver of this Condition. [59]

5. No claims shall be valid on account of any injuries, fatal or otherwise, unless written notice is given to the Corporation's Manager for the United States at Boston, Massachusetts, or to the Agent of the Corporation whose name is endorsed hereon, within thirty days from the date of sustaining any injuries, fatal or otherwise (unless such notice may be shown not to have been reasonably possible), for which claim is to be made, with full particulars thereof and full name and address of the Assured or Beneficiary, as the case may be. Affirmative proof of death, or loss of limb, or sight, or of the duration of disability must be furnished to the Corporation within ninety days from the time of death, or loss of limb, or sight, or of the termination of disability.

6. Legal proceedings for recovery hereunder may not be brought before the expiration of sixty days from the date of filing final proofs with the Corporation, nor brought at all unless begun within two years from the time required herein for final proofs.

7. Claims for indemnity for disability of less than thirteen weeks' duration shall be payable at the end of the period of disability; claims in excess shall be payable at the end of each thirteen weeks of continuous disability, satisfactory affirmative proof of disability and of its continuance to be furnished

before each payment, and final proof in all cases to be furnished in accordance with Condition 5.

8. Notice of a claim for indemnity shall be deemed sufficient when given to the Corporation's Manager for the United States at Boston, Massachusetts, or to a duly authorized Agent of the Corporation in the city, town or county in which the Assured shall reside at the time of giving such notice.

9. The Corporation shall have the right and opportunity to examine the person of the assured or beneficiary, in respect to [60] any alleged injury, disability, or cause of death as often and in such manner as it requires, and shall also have the right and opportunity to make an autopsy in case of death where such autopsy is not forbidden by statute.

10. Any claims arising hereunder, on account of the death of Assured shall be subject to proof of interest. Copy of any assignment shall be given within thirty days to the Corporation, which shall not be responsible for its validity. Consent of the Beneficiary shall not be requisite to a surrender or an assignment of this Policy, or to a change of Beneficiary, or to any change in the policy.

11. This Policy, with a copy of the application therefor, and any riders or endorsements endorsed hereon or attached hereto constitute the entire contract of insurance, except as the same may be affected by any table of rates or classification of risks filed by the Corporation with the Insurance Department of the State wherein this policy is issued, and effective at the time of such issue or delivery.

12. No statement made by the Applicant for this insurance, which statement is not incorporated in or endorsed on the Policy, shall void this Policy, or be used in evidence, and no provision of the charter, constitution or by-laws of this Corporation shall be used in defense of any claims arising under this Policy unless such provisions are incorporated in full in the Policy, but this requirement shall not be deemed to apply to the table of rates or manual of classification of risks filed by the Corporation with the Insurance Department of the State in which the Policy is issued.

13. The Corporation may cancel this Policy at any time by written notice delivered to the Assured or mailed to him at his last address appearing on the Corporation's records with its check for the unearned part, if any, of the premium, but such cancellation [61] shall be without prejudice to any claim arising on account of disability commencing prior to the date on which the cancellation takes effect.

14. No Agent has the power to waive or alter any of the conditions of this Policy.

15. The Assured on the acceptance of this Policy makes the following statements, which he warrants to be true, and such statements are hereby made part of this contract:

#### SCHEDULE OF WARRANTIES.

1. (Assured.) My full name is Leonard Edwin Chenery.
2. My age is 47. My height is 5 feet 8 inches. My weight is 143 pounds. Race—White.

3. My residence is 2205 California Street, City or Town of San Francisco, County of San Francisco, State of California.
4. Beneficiary:  
Name in Full—Edith Chenery.  
Relationship—wife. Address—same.  
(member of firm)
5. I am (employed by ) Henry F. Allen of 210 California Street, City or Town of San Francisco, State of California, whose business is commission merchants, grain and beans.
6. My occupation and duties are fully described as follows:  
Manager; office duties. Classified as select.
7. My income per week exceeds the amount of single weekly indemnity under this and all other policies carried by me.
8. I have no other accident insurance in any company or association, except as follows:—no exceptions (The name of company or association and amount in each to be stated above.)
9. No application ever made by me for accident or health insurance has been declined and no accident or health policy issued to me has been cancelled or renewal refused, except as herein stated: No exceptions. [62]
10. I have never received indemnity for any accident or illness, except as herein stated: Claim \$25. July 1913.

11. I have not in contemplation any special journey or hazardous undertaking, except as herein stated. No exceptions.
12. I have never had nor am I subject to fits or paralysis, disorders of the brain, or any bodily or mental infirmity except as herein stated. No exceptions.
13. My habits of life are correct and temperate and I am in sound condition mentally and physically, except as herein stated. No exceptions.
14. The term of this Policy is Twelve months, beginning at twelve o'clock noon, standard time, on the 5th day of July, 1917, and ending on the 5th day of July, 1918.

IN WITNESS WHEREOF, the Corporation has caused this Policy to be executed by its authorized Manager acting under power of attorney, but it shall not be in force until countersigned by a duly authorized Agent of the Corporation.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, OF LONDON.

By SAMUEL APPLETON,  
Manager and Attorney for the United States.  
CHARLES J. OKELL & CO.  
Countersigned—C. V. JENSEN,

Agent.

At San Francisco, Calif. Date: June 14th, 1917.

CHANGE OF BENEFICIARY FORM.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, OF LONDON,  
ENGLAND.

(United States Branch: Chief Office, Boston, Mass.)

This instrument must be executed in duplicate, and both parts sent to the Corporation for endorsement of consent to change. After endorsement is made, one part will be returned to the Assured to be attached to the Policy. But the Corporation assumes no responsibility, in consenting to the change of beneficiary, for the validity of this instrument.

Revoking hereby any previous designation which may be inconsistent herewith, I hereby direct that the insurance under Policy No. MR. 389194 issued by THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, OF LONDON, ENGLAND, to me be paid, in the event of my death (subject to the provisions of said Policy and in accordance with the terms thereof), to Marion S. Chenery of San Francisco, California, whose relationship to me is that of sister.

Provided, however, that if the death of said nominee shall occur prior to mine, the sum which such deceased would otherwise have taken shall go to my legal representatives.

And the right is reserved to revoke this designation, and, subject to the consent of the Corporation, to nominate a new beneficiary.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of July, 1923, at San Francisco, in the State of California.

(Signed) LEONARD CHENERY,

Assured.

In presence of MARY GRANUCCI,

Of San Francisco, California.

J. D. CHALMEY,

Of San Francisco, California. [64]

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, OF LONDON, ENGLAND, hereby consents to the change of beneficiary herein set forth.

SAMUEL APPLETON,

Manager and Attorney for the United States.

CHARLES J. OKELL & CO.

Countersigned by C. V. JENSEN, Agent.

July 6, 1923.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, OF LONDON, ENGLAND.

ENDORSEMENT BLANK.

Dated at San Francisco, Cal.,

This 6th day of July, 1923.

Attached to and forming part of Policy No. MR-389194-RR. 295441 issued to Leonard Edwin Chenery.

It is understood and agreed that the business address of the assured as described under Item 5



*The Employer's Liability Assur. Corp., Ltd.* 83

is changed to read: #245 California Street, San Francisco, California.

CHARLES J. OKELL & CO.,

By W. A. MORRISON,

General Agents.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, OF LONDON,  
ENGLAND.

(Rider for Accident Policies—Change of Residence.)

Attached to and forming part of Policy No. 389194 issued to Leonard Edwin Chenery.

Notice is hereby accepted that the residence of the Insured under this policy is changed to Apartment #1, 1869 California Street, City or Town of San Francisco, County of San Francisco.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, OF LONDON.

SAMUEL APPLETON,

Manager and Attorney for the United States.

CHARLES J. OKELL & CO., General Agent.

August 19th, 1918. [65]

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, OF LONDON,  
ENGLAND.

(Insuring Clause Waiver.)

July 5th, 1917.

Attached to and Forming Part of Policy No. 389194, Issued to Leonard Edwin Chenery.

It is understood and agreed that the words "Ex-

ternal, violent and'' appearing in the Insuring Clause of this Policy are hereby eliminated.

THE EMPLOYERS' LIABILITY ASSUR-  
ANCE CORPORATION, LIMITED, OF  
LONDON, ENGLAND.

SAMUEL APPLETON,  
Manager and Attorney for the United States.

CHARLES J. OKELL & CO.

By C. V. JENSEN,

General Agent.

July 5th, 1917.

SCHEDULE OF OPERATIONS.

(Surgical Operations—see Section I.)

The amounts stated in the following "Schedule of Operations" are payable under this Policy if issued for Twenty-five Dollars Weekly Indemnity, proportionate amounts being payable if the policy is issued for a larger or smaller Weekly Indemnity.

AMPUTATION OF—

Foot, Hand or Forearm.....	\$ 25.00
Leg or Arm.....	50.00
Thigh.....	100.00
Finger or Fingers.....	10.00

[66]

DISLOCATIONS, Reduction of—

Shoulder, Elbow, Hip, Knee or Ankle..	\$ 25.00
Wrist or Lower Jaw.....	15.00
Thumb or Fingers.....	10.00

EXCISION OF—

Shoulder, Hip or Knee-Joint.....	100.00
Elbow, Wrist or Ankle-Joint.....	50.00

Toe or Toes.....	25.00
<b>FRACTURES, Reduction of—</b>	
Nose, Lower Jaw, Collar-bone or Shoulder-blade.....	25.00
Breast Bone.....	10.00
Rib or Ribs.....	10.00
Upper Arm.....	35.00
Forearm (one or both bones)....	25.00
Wrist or Hand.....	15.00
Fingers .....	10.00
Any of the Bones of the Pelvis or Sacrum.....	50.00
Coccyx.....	10.00
Thigh.....	75.00
<b>FRACTURES—Continued—</b>	
Knee Cap or Leg Bones (one or both) ..\$	50.00
Bones of Foot.....	15.00
Toe or Toes.....	10.00
<b>GUNSHOT WOUNDS—</b>	
Treatment not necessitating Amputation or Laparotomy.....	25.00
<b>HERNIA (Abdominal)—</b>	
Any cutting operation for the radical cure of the Reducible, Irreducible or Strangulated form.....	100.00
<b>LAPAROTOMY (opening of the abdominal cavity for an operation on any organ contained therein, or for Traumatic Peritonitis, or Exploratory Incision)</b>	100.00
<b>NECROSIS (death of bone)—</b>	
Sequestrotomy (removal of dead bone)	35.00
<b>PERITONITIS (See Laparotomy).....</b>	100.00

SKULL TREPHINING for fracture.....	100.00
SYNOVITIS (inflammation of the lining membrane of a joint)	
Incision.....	25.00
TETANUS—	
Injection of anti-tetanic serum into frontal lobe of brain.....	100.00
WOUNDS OF SCALP or other parts—sut- uring.....	5.00
[67]	

## EXHIBIT "B."

## RENEWAL POLICY No. 269003.

Principal Sum—\$7500.00                      Premium \$25.00  
 Weekly Indemnity—\$25.00.

Renewal of Policy No. MR-389194-236081.

THE EMPLOYERS' LIABILITY ASSURANCE  
 CORPORATION, LIMITED, OF LONDON,  
 ENGLAND.

United States Branch: Chief Office 33 Broad Street,  
 Boston, Mass.

In consideration of the sum of \$25.00 Accident or  
 Disability Policy No. MR-389194 issued to Leon-  
 ard Edwin Chenery of San Francisco (City or  
 Town), San Francisco (County), California (State),  
 is hereby continued in force for the term of twelve  
 months from noon of the 5th day of July, 1922, to  
 noon of the 5th day of July, 1923, subject to all the  
 agreements and conditions in the aforesaid Policy.

SAMUEL APPLETON,

Manager and Attorney for the United States.

This renewal receipt will not be valid until

countersigned by the duly authorized agent of the corporation at San Francisco, California.

CHARLES J. OKELL & CO.,  
C. V. JENSEN,

Agent.

Date June 23d, 1922. [68]

EXHIBIT "C."

RENEWAL RECEIPT No. 295441.

Principal Sum—\$7500.00                      Premium \$25.00

Weekly Indemnity—\$25.00

Renewal of Policy No. MR-389194-269008.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, OF LONDON,  
ENGLAND.

United States Branch: Chief Office 33 Broad  
Street, Boston, Mass.

In consideration of the sum of \$25.00 Accident or Disability Policy No. MR-389194 issued to Leonard Edwin Chenery, of San Francisco (City or Town), San Francisco (County), California (State), is hereby continued in force for the term of twelve months from noon of the 5th day of July, 1923, to noon of the 5th day of July, 1924, subject to all the agreements and conditions in the afore-said Policy.

SAMUEL APPLETON,

Manager and Attorney for the United States.

This renewal receipt will not be valid until

countersigned by the duly authorized agent of the corporation at San Francisco, California.

CHARLES J. OKELL & CO.,  
C. V. JENSEN,  
Agent.

Date June 25, 1923. [69]

EXHIBIT III.

Claim Department.

THE EMPLOYERS' LIABILITY ASSURANCE  
CORPORATION, LIMITED, OF LONDON,  
ENGLAND.

CHARLES J. OKELL & CO.  
General Agents for the Pacific Coast.  
334 Pine Street.

Samuel Appleton,  
United States Manager,  
Boston.

San Francisco, Cal., Dec. 18, 1923.

In replying quote this No. —.

Leonard Edwin Chenery, Esq.,  
245 California Street,  
San Francisco, California.

Dear Sir:

RE: POLICY No. MR-389194.

Referring to your claim under the above policy on account of the death of Mrs. Chenery, we beg to state that we referred the case to Counsel in New Zealand and had it carefully investigated there. We find that the case does not come within the coverage of the beneficiary clause of the policy.

Section H provides for insurance of the beneficiary while traveling "a public conveyance provided by a common carrier for passenger service." The investigation shows that at the time of Mrs. Chenery's death she was not on a public conveyance provided by a common carrier for passenger service and consequently the claim is not covered by the policy.

Yours very truly,  
E. BRADBURY,  
Supt. Pacific Coast Claim Dept.

EB: AT.

Service admitted this 12th day of Dec., 1924.

REDMAN & ALEXANDER,  
Attys. for Defendant.

[Endorsed]: Filed Dec. 18, 1924. Walter B. Maling, Clerk. [70]

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In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator With the Will Annexed of the Estate of EDITH P. CHENERY, Deceased,

Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, a Corporation, Defendant.

STIPULATION WAIVING AMENDMENT TO  
PLAINTIFF'S PROPOSED BILL OF EX-  
CEPTIONS.

IT IS HEREBY STIPULATED by and between the parties hereto that the defendant herein hereby waives the proposal of any amendments to the bill of exceptions as presented by the plaintiff, and that the same may be settled and allowed in the form as proposed by plaintiff.

Dated: December 16, 1924.

WALLACE & AMES,  
Attorneys for Plaintiff.  
REDMAN & ALEXANDER,  
Attorneys for Defendant.

[Endorsed]: Filed Dec. 18, 1924. Walter B. Maling, Clerk. [71]

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In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator With the Will Annexed of the Estate of EDITH P. CHENERY, Deceased,

Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, a Corporation,  
Defendant.



CERTIFICATE TO BILL OF EXCEPTIONS.

I, George M. Bourquin, Judge of the above-entitled court, do hereby certify that the annexed bill of exceptions in the above-entitled action is a true bill of exceptions, and the same has been approved, allowed and settled, and ordered filed and made a part of the record in said cause.

Done in open court this 18th day of December, 1924.

BOURQUIN,  
Judge of the District Court.

[Endorsed]: Filed Dec. 18, 1924. Walter B. B. Maling, Clerk. [72]

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In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator With the Will Annexed of the Estate of EDITH P. CHENERY, Deceased,

Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, a Corporation, Defendant.

## PETITION FOR WRIT OF ERROR.

Comes now Leonard Chenery, as Administrator with the Will Annexed of the Estate of Edith P. Chenery, deceased, plaintiff herein, and complains and states that on the 11th day of November, 1924, the above-entitled court entered judgment herein in favor of the defendant above named and in the proceedings had prior thereto in the above-entitled action, certain errors were committed to the prejudice of this plaintiff, all of which appear in detail from the Assignment of Errors which is filed with this petition.

WHEREFORE, this plaintiff prays that a writ of error issue in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record and proceedings, with all things concerning the same, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: December 18th, 1924.

WALLACE & AMES,  
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 18, 1924. Walter B. Maling, Clerk. [73]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator With the Will Annexed of the Estate of EDITH P. CHENERY, Deceased,

Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, a Corporation,

Defendant.

#### ASSIGNMENT OF ERRORS.

Comes now Leonard Chenery as Administrator with the Will Annexed of the Estate of Edith P. Chenery, deceased, plaintiff in the above-entitled action, and plaintiff in error herein, and in connection with his petition for a writ of error on file herein makes the following assignment of errors on which he will rely and which he will urge in the prosecution of said writ of error in the above-entitled action, which errors occurred at the trial of the said cause:

#### I.

The Court erred in granting the motion of the defendant herein for a verdict to be directed in its favor and directing a verdict in favor of defendant accordingly. The proceedings in that respect

were as follows: At the close of the evidence offered on behalf of plaintiff, and defendant offering no evidence, the Court made its ruling in the following language:

“The COURT.—At the conclusion of the evidence in this case the defense moved that the jury be directed to return a verdict in its favor on the ground that the evidence had failed to make out a case which would support any verdict for the plaintiff.

The action is upon an insurance policy, which has a not unusual provision, namely, that while it insures the [74] life of the husband for the benefit of the wife, it contains a provision insuring the wife to a certain extent, namely, while a passenger in or on a public conveyance, including platform, steps, or running board—words indicating somewhat the character of a public conveyance, provided by a common carrier for passenger service; that is to say, if the wife is injured or killed while a passenger in or on a public conveyance provided by a common carrier for passenger service, the insurance company will pay a certain amount, depending upon the extent of the injuries. The beneficiary, the wife in this case, was killed, according to the evidence, under circumstances that have been detailed, namely, while riding in an automobile from near the farm where she was a visitor, through one town, Clevedon, to another town on the railroad. The contention of the plaintiff is that she was thus injured

while a passenger in a public conveyance provided by a common carrier for passengers. The case has been argued, the evidence is without conflict, there can only be one question involved in it, and that is whether or not the conveyance was a public conveyance provided by a common carrier at that particular time and place where the wife was injured. Both parties have argued the matter and submitted a good deal of law, but there are a few considerations the Court deems controlling, and will state them briefly.

In the first place, while it is true that insurance policies, where they are ambiguous, are to be construed as favorably in behalf of the insured and the beneficiary as they will bear, the Court finds nothing whatever ambiguous in this particular policy. A public conveyance provided for passengers by a common carrier has a well-defined and settled meaning, namely, a conveyance provided by one who is a common carrier for the indiscriminate use of the public, not necessarily between fixed points, or at a settled price, but one which he is under obligation as a common carrier to render service with when called upon by any of the patronizing public. The reasons for this limitation in the policy—for injuries received by the beneficiary while in a public conveyance provided by a common carrier of passengers, is very plain, namely, a public conveyance; and a common carrier is required to exercise a very much higher degree

of diligence for the safety of the passenger than a private conveyance will exercise as required by the law, and, therefore, the insurer—the company—in order to secure to itself as much protection as possible in this collateral insurance of the wife, limits the circumstances under which it will pay to the one where she is injured in one of these conveyances operated by a common carrier, and those under and subject to a very high degree of care and diligence on the part of those who convey; it was not willing to accept the responsibility of a mere private carrier, and in a private conveyance, from whom is not exacted that same degree of care and diligence. So much for that.

Now, the distinction between a private carrier and a common carrier is well settled. In some instances either may deviate from their settled character and perform the functions of another. A private carrier is one who usually will carry on special contracts, when he sees proper; and [75] does not hold himself out to be patronized by the public generally, and who is not bound to accept any passengers or engage in any contract of carriage unless he sees fit. A common carrier, however, is one whose labors are exclusively devoted to carrying the public on their demand. He is under a burden and a duty to carry anybody who come along and patronize him at the times fixed, of course subject to time-tables, and subject to

his rates, and at a fixed price, may also on occasion be immaterial. He is not necessarily limited to a definite rate or to a fixed termination, but he is bound to give service to the public. It is not left to his whim to select his customers. The law in respect to taxicabs, automobiles and carriers of that character is not altogether clear, and not altogether settled, for the reason that the same carrier may serve partially as a private carrier and partially as a common carrier. For instance, in the case of a taxicab company, which is licensed by the city, which has an engagement with a railroad terminal, we will say, that is a case that the Supreme Court has passed on, to carry passengers from railroad depots to hotels, or any other place in the city, and generally at rates fixed or subject to be fixed by the governing authority of the city: In that case the taxicab man is a common carrier; he is bound to take any passenger at the depot who behaves himself and is a fit subject for carriage, and who will pay the fare. If the fares fixed by the city do not cover all points in the city, or all distances, there would be special contracts on occasion. But this same taxicab man, aside from the times when he is receiving passengers from depots and carrying them about the city, may operate as a private carrier. He may engage himself to anyone who wants to hire him on a special contract, for a special trip, at a special price, for a special number of passengers.

To that extent he is a private carrier. He does not find himself under the obligation again to exercise that same high degree of care and diligence for the safety of the passenger that the common carrier does. His liabilities and his rights depend entirely upon the separate contract he makes with the individual.

The Supreme Court of the United States has dealt with the proposition now before the Court in *Terminal Association vs. Kutz*, 241 U. S., where they drew that distinction and pointed out, that the taxicab man—owner—proprietor—in so far as he was subject to contract to wait at hotels and carry passengers from and to hotels, or to wait at the railroad terminal and carry from or to the railroad, was a common carrier. But wherein he received calls at his own garage, over the 'phone or otherwise, for special engagements, and special trips, at contract rates to be fixed by himself, he was performing a duty simply within the bounds of private contract, and was not a common carrier. Of course, that question involved the question as to how far the city could control and govern his actions as a public utility; but the fact that he was held not to be within the law as to a public utility in respect to his private engagements, was dependent entirely upon the fact that to that extent he was not by the Court held to be a common carrier. [76]



Now, we cannot go any further for authority than the Supreme Court of the United States. This court is subject to it. Its decisions are subject to review, in the last analysis, by that court, and it is our duty to follow that court.

Now, fitting the law to the circumstances of this case, here is a man, Ward, whom the evidence shows was a common carrier between the town of Clevedon and the railroad terminal; he was licensed by the town to carry passengers between those two places; he had a timetable; he performed three round trips a day. There was nothing to indicate that he was obliged to perform any other trips. Just exactly the same as a railroad which has its time-table, those who want to travel must conform to the railroad's time, if they want to take advantage of its powers as a common carrier. The court would not say that a railroad running a special train on a special occasion would not be a common carrier, but, again, that is different from this case. Ward was not obliged to go beyond the town of Clevedon to pick up passengers. Those who wanted to patronize him would come there. He would pick up any on the road between Clevedon and Papakura, but he was not obliged to and could go elsewhere. There is evidence that on one occasion, or two, perhaps, he had visited this ranch. But whether or not under the same circumstances as the case and the occasion involved in this case, does not appear. On

this particular day he received a call from one of the ladies at the ranch. This ranch was six miles beyond the town of Clevedon, which was the end of his regular run. He received a call out of his regular hours. He was asked if he would come and take a party to the railroad, and he answered that he would, and he did go. He made a special trip, for a special party, at a special time, off of his regular run, and for special compensation; whereas his regular price was 3 shillings for this trip for four passengers, he was to get something like 35 shillings—a very handsome and substantial increase. It is true that where the accident occurred, and after he had received his party and was driving to Clevedon to Papakura, he was then on his regular run, but still it was a single, *indivisible* and entire trip—a single, individual and entire contract and engagement, made not for his regular run, but to go far beyond it and take a special party on a special occasion and at a special price.

The Court cannot see that this case does not come clearly within the rule laid down by the Supreme Court in the Terminal case, 241 U. S. In other words, at this time and place where this unfortunate lady met her death, she was not riding in a public conveyance provided by a common carrier of passengers. He had laid aside, for the time being, his character as a common carrier. The conveyance at that time bore, not the character of a public con-

veyance, but to all intents and purposes was private for this particular party. Ward was a private carrier. The principles involved in the case are adverted to in the case of Santa Fe Railroad Co., 228 U. S., where the court points out that even a common carrier may occasionally lay aside his capacity of a common carrier, enter the domain of a private carrier, and be held only to his contractual obligations. [77]

For these reasons, holding, as I do, that the policy, when it said 'common carrier in a public conveyance,' meant what it said, to give to the insurance company the benefit of the high degree of diligence exacted of a common carrier, the Court is bound to and does hold that this case is not within the policy.

The motion for a directed verdict is granted.

Gentlemen of the Jury, there is nothing for you to decide in the case. It is simply a question of law. The juror in the end seat will sign the verdict."

Mr. AMES.—I desire to take an exception to the ruling of the court."

The COURT.—It will be noted."

To the said ruling of the Court the plaintiff duly excepted, which exception is designated herein as Exception No. 1.

## II.

The Court erred in refusing to permit the witness Hilda M. Graves to testify as to the character of the motor-bus upon which Edith P. Chenery was a

passenger. The proceedings in that respect were as follows:

“Mr. AMES.—Q. I don't wish to lead you, Mrs. Graves, but I want to bring these matters out. Did you have any conversation with Mr. Ward with reference to this motor-bus that you got on at Clevedon?

Mr. ALEXANDER.—We object to that as being immaterial, irrelevant and hearsay.

The COURT.—What is the object of it?

Mr. AMES.—The object is to prove that this is the bus that he regularly used on this run, and so is admitted.

Mr. ALEXANDER.—We object to that as hearsay and not binding on the defendant.

The COURT.—I am inclined to think so. Objection sustained.”

To said ruling of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 2.

### III.

The Court erred in sustaining the objection of the defendant to the testimony of the witness Hilda M. Graves as to whether or not the driver of the automobile bus had a regular run connecting with the railroad train. The proceedings in that respect were as follows: [78]

“Mr. AMES.—Q. Do you know the fact that he had a regular run connected with the railroad train? A. I do.

Mr. ALEXANDER.—I object to that unless

it is shown she knows of her own knowledge, and not by hearsay.

The COURT.—She has answered she knows.

Mr. AMES.—Q. Has he?

Mr. ALEXANDER.—Before that question is answered, may I ask a question as to the means of her knowledge?

The COURT.—You may.

Mr. ALEXANDER.—Q. Do you know anything about that of your own knowledge, except the particular ride you were on? A. No.

Q. Only what was told you by others?

A. What the man, himself, told me that day.

Mr. ALEXANDER.—We object to the testimony as hearsay, and not of her own knowledge.

The COURT.—Objection sustained.”

To said ruling of the Court the plaintiff duly excepted which exception is herein designated as Exception No. 3.

#### IV.

The Court erred in sustaining the objection of the defendant to the testimony of the witness, Jessie L. P. Perry, relative to whether or not the driver of the automobile served the public generally. The proceedings in that respect were as follows:

“Mr. AMES.—Q. Do you know whether or not he serves the public generally?

Mr. ALEXANDER.—We object to that as immaterial, irrelevant and incompetent, and calling for the witness' conclusion. It is a question of law.

The COURT.—It is leading, for one thing. You may ask her details to find out what she knows. Objection sustained.

Mr. AMES.—Exception.

Q. Mrs. Berry, what do you know with reference to the occupation of Mr. Ward, as to whether or not he serves the public generally?

Mr. ALEXANDER.—We object to that upon the same ground. We have no objection to the lady stating what she observed. What she learned by hearsay is not competent.

The COURT.—She may answer. Objection overruled.

A. He serves the public generally, because I always paid him my fare.

Mr. ALEXANDER.—I move that that be stricken out as not responsive, and it is a legal question, rather than stating what she knows as to the facts.

The COURT.—I think so. The answer will be stricken.”

To said ruling of the Court the plaintiff duly excepted which exception is herein designated as Exception No. 4.

#### V.

The Court erred in sustaining the objection of the defendant to the testimony of Mrs. Jessie L. P. Berry, relative [79] to her understanding that the driver of the automobile bus did serve anyone. The proceedings in that respect were as follows:

“Mr. AMES.—Q. And your understanding is

that he will go and serve anyone, even those out in the outlying ranches?

Mr. ALEXANDER.—We object to that. What she understands is not competent.

The COURT.—Objection sustained.”

To said ruling of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 5.

## VI.

The Court erred in overruling the objection of the plaintiff to the question addressed to the witness J. Ward, relative to his hiring out automobiles privately. The proceedings in that respect were as follows:

“Is it not a fact that you hired out automobiles privately in addition to the automobiles used on the regular run from Clevedon to Papakura?”

Mr. AMES.—The same objection to all this line of testimony, your Honor.

The COURT.—It will be admitted over the objection.”

To said ruling of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 6.

## VII.

The Court erred in overruling the objection of the plaintiff to the question addressed on cross-examination to the witness J. Ward, relative to his carrying on a general garage business. The proceedings in that regard were as follows:

“Q. Is it not a fact that at the time of the

accident you were carrying on a general garage business?

Mr. AMES.—I object to the question as immaterial, irrelevant and incompetent as to what other business he may have had.

The COURT.—It is cross-examination; objection overruled.”

To said ruling of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 7.

### VIII.

The Court erred in overruling the objection of the plaintiff to the question asked on cross-examination of the witness [80] J. Ward, relative to his being agent for certain automobiles. The proceedings in this respect were as follows:

“Q. Were you also at that time agent for certain automobiles?

Mr. AMES.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—It is cross-examination. Of course, if he was a common carrier, or was acting within the conditions of the policy, it would be immaterial, but this is cross-examination. Objection overruled.”

To said ruling of the Court, the plaintiff duly excepted, which exception is herein designated as Exception No. 8.

### IX.

The Court erred in overruling the objection of plaintiff to the question asked of the witness J. Ward on cross-examination relative to his hiring



out cars for private use. The proceedings in this respect were as follows:

“Q. Was it your practice at the time of the accident to hire out cars for private use with drivers?

Mr. AMES.—The same objection.

The COURT.—Objection overruled.”

To said ruling of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 9.

### X.

The Court erred in overruling the objection of the plaintiff to the question directed on cross-examination to the witness J. Ward, relative to arrangements made to take Mrs. Chenery and party on the occasion in question. The proceedings in that respect were as follows:

“Q. Was it pursuant to that branch of your business that arrangements were made to take Mrs. Chenery and party from the Humphreys Davies Farm to Papakura?

Mr. AMES.—I object to that as immaterial, irrelevant and incompetent. The foundation is that it was his partner's business.

Mr. ALEXANDER.—No, he didn't say that; he said that he took cars privately; he said it was part of his regular business.

Mr. AMES.—Also the further objection that even if that were so it would not make him out to be anything but a common carrier.

The COURT.—I suppose that is one of the issues in the case. I think he may answer the

question. It will be controlled by instructions at the proper time."

To said ruling of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 10. [81]

## XI.

The Court erred in overruling the objection of plaintiff to a question propounded to the witness George Humphreys-Davies relative to the nature of the conveyance upon which Mrs. Chenery left his house, and in denying plaintiff's motion to again read the answer to the said question after the cross-examination. The proceedings in that respect were as follows:

"Q. State whether or not this conveyance upon which Mrs. Chenery left your house on June 16, 1923, as a passenger for hire, was a public or private conveyance.

Mr. ALEXANDER.—We object to that on the following grounds: The witness was not there. It was three miles from his home. He could not have known what the facts were, because he was not there. It calls for the conclusion of the witness. It is leading. The transportation took place three miles from his home and he was not there.

The COURT.—Objection sustained.

Mr. AMES.—Your Honor, he could testify as to what J. Ward had in the way of a motor-bus.

The COURT.—He has testified already as to his public character in so far as it is gen-

erally known. I think when you reduce him to the particulars of this occasion he could not have known the details. Objection sustained."

Mr. AMES.—Now, I renew my requests to have the answer to question 23 allowed, on the ground that Mr. Alexander's objection that no proper foundation has been laid has been obviated by the cross-examination.

The COURT.—What is there in the cross-examination?

Mr. AMES.—He asked several questions about how she went.

The COURT.—Any objection?

Mr. ALEXANDER.—Yes, your Honor. I simply fixed the places of these different points.

The COURT.—Motion denied."

To these rulings of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 11.

## XII.

The Court erred in sustaining the objection of defendant to a question asked the witness Ethel Humphreys-Davies relative to the nature of the conveyance in which Mrs. Chenery left her house and in refusing to allow the motion of plaintiff renewing his offer of said testimony. The proceedings in that respect were as follows:

"Q. State whether or not this conveyance upon which Mrs. Chenery left your house on June 16, 1923, as a passenger for hire, was a public or private conveyance. [82]

"Mr. ALEXANDER.—Objected to as call-

ing for the legal conclusion of the witness, as leading, and it does not appear that she knows.

“The COURT.—Objection sustained.

“Mr. AMES.—Now, I would like to renew my offer of question No. 24 on direct examination of Mrs. Humphreys-Davies on the ground that the foundation was laid in question 12 of the cross-interrogatories.

Mr. ALEXANDER.—It is exactly the same situation, your Honor.

The COURT.—Motion denied; objection sustained.”

To this ruling of the Court the plaintiff duly excepted, which exception is herein designated as Exception No. 12.

WALLACE & AMES,  
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 18, 1924. Walter B. Maling, Clerk. [83]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator With the Will Annexed of the Estate of EDITH P. CHENERY, Deceased,

Plaintiff,

vs.

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED, a Corporation,

Defendant.

ORDER ALLOWING WRIT OF ERROR AND APPROVING COST BOND.

On this day came the plaintiff Leonard Chenery, as administrator with the will annexed of the estate of Edith P. Chenery, deceased, by his attorneys, Messrs. Wallace & Ames, and filed herein and presented to the Court his petition praying for the allowance of a writ of error and an assignment of the errors to be urged by him, and praying also that a transcript of the record and proceedings in the above-entitled cause with all things concerning the same be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and it further appearing that the said plaintiff has heretofore filed a cost bond in the sum of \$300 Three

Hundred Dollars on appeal, which bond is hereby approved. On consideration whereof the court does hereby allow a writ of error as prayed for and it is now therefore

ORDERED that the writ of error issue and that all proceedings on the judgment of said cause be stayed pending the prosecution herein of the said writ of error.

Dated: This 18th day of December, 1924.

BOURQUIN,

Judge of the District Court.

[Endorsed]: Filed Dec. 18, 1924. Walter B. Maling, Clerk. [84]

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(COST BOND ON APPEAL.)

KNOW ALL MEN BY THESE PRESENTS, That we, Leonard Chenery, as administrator with the will annexed of the estate of Edith P. Chenery, deceased, as principal, and National Surety Company, a corporation, as sureties, are held and firmly bound unto The Employer's Liability Assurance Corporation, a corporation, in the full and just sum of Three Hundred (\$300) Dollars, to be paid to the said The Employer's Liability Assurance Corporation, certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of

December, 1924, in the year of our Lord one thousand nine hundred and twenty-four.

WHEREAS, lately at a District Court of the United States for the Northern District of California, Southern Division, in a suit depending in said court, between Leonard Chenery, as administrator with the will annexed of the estate of Edith P. Chenery, deceased, plaintiff and The Employer's Liability Assurance Corporation, a Corporation, defendant, a judgment was rendered against the said plaintiff, and the said plaintiff Leonard Chenery, as administrator as aforesaid, having obtained from said court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant The Employer's Liability Assurance Corporation, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California:

Now, the condition of the above obligation is such, that if the said plaintiff, Leonard Chenery, as aforesaid, shall prosecute his writ of error to effect, and answer costs if he fail to make plea good, then the above obligation to be void; else to remain in full force and virtue.

LEONARD CHENERY, as Administrator  
With the Will Annexed of the Estate  
of Edith P. Chenery, Deceased. (Seal)  
By ALDEN AMES, (Seal)  
His Attorney.

(Seal National Surety Co.)

NATIONAL SURETY COMPANY,

T. F. OGG,

Its Attorney-in-Fact.

Acknowledged before me the day and year first above written.

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[Endorsed]: No. 17,020. United States District Court for the Northern District of California, Southern Division. Leonard Chenery, as Admr., etc., vs. The Employer's Liability Assur. Corp. Cost Bond on Appeal. Filed Dec. 18, 1924. Walter B. Maling, Clerk.

Form of bond and sufficiency of sureties approved.

BOURQUIN,  
Judge. [85]

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In the Southern Division of the United States District Court for the Northern District of California, Second Division.

No. 17,020.

LEONARD CHENERY, as Administrator With the Will Annexed of the Estate of EDITH P. CHENERY, Deceased,

Plaintiff,

vs.

THE EMPLOYER'S LIABILITY ASSURANCE CORPORATION, LIMITED, a Corporation,

Defendant.



PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please make, certify and transmit forthwith to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, at San Francisco a copy of the record in the above-entitled cause as a return to the writ of error heretofore sued out of said Circuit Court of Appeals to review the judgment in said cause, consisting of the following files and records and proceedings in said cause: Third amended complaint.

Answer to third amended complaint.

Verdict and judgment.

Bill of exceptions.

Stipulation waiving amendment to bill of exceptions.

Certificate to bill of exceptions.

Petition for writ of error.

Order allowing writ of error reciting approval of cost bond and that writ of error issue.

Writ of error and admission of service on same.

Citation on writ of error and admission of service of same.

Assignment of errors.

This praecipe.

WALLACE & AMES,

Attorneys for Plaintiff in Error.

Service of the within admitted this 23d day of December, 1924.

REDMAN & ALEXANDER,

Attorneys for Defendant.

[Endorsed]: Filed Dec. 23, 1924. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [86]

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(Title of Court and Cause.)

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing eighty-six (86) pages, numbered from 1 to 86, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for record on writ of error, as the same remain on file and of record in the above-entitled cause, in the office of the clerk of said Court, and that the same constitutes the record on writ of error to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing return to writ of error is \$40.75; that said amount was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 24th day of December, A. D. 1924.

[Seal]

WALTER B. MALING,

Clerk United States District Court for the Northern District of California. [87]

WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America,  
to the Honorable, the Judges of the District  
Court of the United States for the Northern  
District of California, Southern Division,  
GREETING:

Because, in the record and proceedings, as also  
in the rendition of the judgment of a plea which  
is in the said District Court, before you, or some  
of you, between Leonard Chenery, as Adminis-  
trator with the Will Annexed of the Estate of  
Edith P. Chenery, Deceased, Plaintiff and Plain-  
tiff in Error, and The Employer's Liability Assur-  
ance Corporation, a Corporation, Defendant and  
Defendant in Error, a manifest error hath hap-  
pened, to the great damage of the said Leonard  
Chenery, as Administrator with the Will Annexed  
of the Estate of Edith P. Chenery, Deceased, plain-  
tiff in error, as by his complaint appears:

We, being willing that error, if any hath been,  
should be duly corrected, and full and speedy  
justice done to the parties aforesaid in this behalf,  
do command you, if judgment be therein given, that  
then, under your seal, distinctly and openly, you  
send the record and proceedings aforesaid, with  
all things concerning the same, to the United States  
Circuit Court of Appeals for the Ninth Circuit,  
together with this writ, so that you have the same  
at the City of San Francisco, in the State of Cali-  
fornia, within thirty days from the date hereof,

in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, the 18th day of December, in the year of our Lord one thousand nine hundred twenty-four.

[Seal] WALTER B. MALING,  
Clerk of the United States District Court, Northern District of California.

Allowed by:

\_\_\_\_\_,  
Judge. [88]

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States, to The Employer's Liability Assurance Corporation, Limited, a Corporation, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Southern

Division, Second Division, wherein Leonard Chenery, as Administrator with the Will Annexed of the Estate of Edith P. Chenery, Deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable GEORGE M. BOURQUIN, United States District Judge for the District of Montana, designated to hold and holding this Court, this 18th day of December, A. D. 1924.

BOURQUIN,

United States District Judge.

Service and receipt of a copy of the within \_\_\_\_\_ is hereby admitted this 20 day of Dec., 1924.

REDMAN & ALEXANDER,

Attorneys for Deft.

[Endorsed]: No. 17,020. United States District Court for the Northern District of California, Southern Div. Leonard Chenery, as Administrator With the Will Annexed of the Estate of Edith P. Chenery, Deceased, Plaintiff in Error, vs. The Employer's Liability Assurance Corporation, a Corporation, Defendant in Error. Citation on Writ of Error. Filed Dec. 23, 1924. Walter B. Maling, Clerk. By A. C. Aurich, Deputy Clerk. [89]

[Endorsed]: No. 4449. United States Circuit Court of Appeals for the Ninth Circuit. Leonard Chenery, as Administrator With the Will Annexed of the Estate of Edith P. Chenery, Deceased, Plaintiff in Error, vs. The Employer's Liability Assurance Corporation, Limited, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed December 29, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.